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COLLEGE STUDENTS AND ACTIVISM: A CASE STUDY OF THE  
UNDERGRADUATE CHAPTERS OF THE AMERICAN CIVIL LIBERTIES UNION  
OF NORTH CAROLINA

A Thesis

by

PAUL ANTHONY FUNDERBURK

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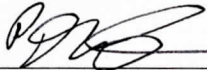
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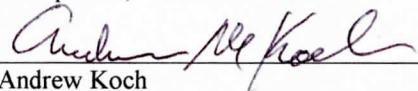
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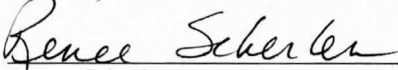
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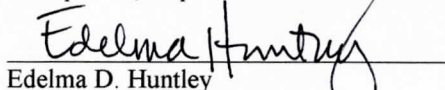
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## **Abstract**

### **COLLEGE STUDENTS AND ACTIVISM: A CASE STUDY OF THE UNDERGRADUATE CHAPTERS OF THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA**

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This work analyzes college activism with a specific focus on the undergraduate chapters of the American Civil Liberties Union of North Carolina. Specifically, it provides a detailed history of the national office, college involvement in Twentieth Century progressive social movements, and each active undergraduate chapter of the ACLU in North Carolina to analyze the state of its college programming and draw lessons from histories that might aid the organization in the future. The history of the national ACLU and college involvement in social movements were collected by secondary sources, while the chapter histories were collected through primary sources – such as interviews – and secondary sources. The work finds that there is room for a more active college development program within the organization and lists guidelines for implementing one.

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## **Introduction: The Purpose of this Work and an Overview of its Structure**

This project was born of a desire to improve the infrastructure of the American Civil Liberties Union (ACLU) on a national basis. Although not widely discussed in public arenas, half of its membership is over the age of fifty-five, which creates a substantial need to recruit and train the next generation of civil libertarians in this country. The practice has already paid dividends for other national organizations as the ACLU has fallen behind. The Republican Party, for example, helped create such influential figures as Karl Rove, Ralph Reed and Jack Abramoff through its College Republican program (of which all three were participants). Since many of these figures have traditionally been hostile toward civil liberties considerations – at least since the Reagan revolution – it is important for the ACLU to develop operatives of their own. This project is a first attempt to lay the groundwork for a workable model for youth outreach activity that could accomplish that goal.

Section one helps provide an aggregate-level historical context about past and present actions pertinent to the question at hand. It contains two chapters, with the first tracing the history of the ACLU at the national level and the second tracing involvement of college students in progressive 20th century social movements. A national history of the organization serves to describe where it has been, what it has faced and where it is going in the future. A description of college student involvement in progressive 20th

century social movements provides a dramatic illustration of the sheer power provided by youth that has been harnessed in the past and could be harnessed in the future. Although college students may not spark widespread political change in the foreseeable future, as they have in the past, many of their contributions could be quite similar, breathing new ideas and new life into the fight for civil liberties.

Section two contains a history of all presently-existing ACLU college undergraduate chapters in North Carolina. Included, in order, are histories of the Appalachian State University, Duke University, North Carolina State University and University of North Carolina at Asheville chapters. They serve two primary purposes. First, they demonstrate the potential of college activists to enact meaningful educational projects in their communities and respond effectively to violations of peoples' rights. Secondly, they provide a framework for future generalization into a workable, best practices model for chapter development by incorporating lessons learned from individual affiliates and combining them to benefit the college program at large.

The third and final section is an analysis chapter bringing all of the research together and incorporating those observations as "lessons learned." As mentioned, however, the work is largely qualitative. Consequently, it should be used as a theoretical foundation for future action and that action should be tested more systematically – particularly including college affiliate membership in addition to leadership. Also, more efforts need to be made to study ACLU law school chapters to maximize their utility for the organization as well. With this research setting a path, and with future study maintaining or altering it for maximum efficacy in the future, significant inroads can be made into creating a more active, sustainable and potent organization.



## **Section One: An Aggregate-level Historical Context**

When recounting the histories of the American Civil Liberties Union and college students in progressive 20th century social movements, careful attention should be paid to a number of pertinent trends. With the history of the ACLU, undoubtedly, there is no single organization that has made as dramatic an impact on civil liberties in the United States of America. The Constitution and the Bill of Rights require rigid action and enforcement to remain relevant in contemporary society. Secondly, the organization has adapted several times throughout its history to better position itself as an advocate for civil liberties. Moving from direct action and occasional lawsuits in its earliest years, it grew to the nation's largest public interest law firm and adapted its tactics, even its staff, to maximize its potential to make a difference. Third, it has grown from a purely elitist group in its earliest days to a massive membership organization of over half a million members, suggesting a wider popular appeal for and understanding of civil liberties than its founders envisioned. Finally, this practice has come with some repercussions, such as a membership and financial crisis in the mid-Seventies brought on by single-issue interests and offense at organizational practices that ran contrary to the personal sensibilities of its members. Although membership is currently at an all-time high, likely brought on by antipathy toward the policies of the Bush Administration, a political change in the wind or defense of the unpopular could create a challenge in the future. If and when that day comes, it is immensely important that the organization has spent time

planning for and responding to it. Perhaps no breeding ground for stable and active membership exists that surpasses the college environment. Contrary to older Americans – who are generally more fixed in their views – youth are much more likely to explore and develop new ideas due to their state of development at a young age. Targeting those students who are interested in civil liberties issues could aid in forming a well-versed, articulate constituency that would not change with the political tide.

The history of college students in progressive 20th century social movements also contains important trends. The first important element is that youth provide a wealth of energy and idealism that, when placed in the proper direction, can substantially aid social movements in the United States. The same holds true for defending civil liberties. Secondly, they have contributed to litigation, demonstrations and a variety of other tactics that have aided widespread change. There is no reason to suggest that these activities might not be possible for a dedicated, albeit considerably smaller, group of students in the future. Third, young people have contributed many powerful new ideas to social movements, from the civil rights movement to women's liberation, including many that have lived on long after mass political participation. Fourth, without proper direction, past student movements have largely degenerated into radical factionalism, highlighting the need for a credible presence to guide and direct their involvement in furthering specified goals. Finally, reform organizations have long outlived their radical counterparts and provide the best venue for channeling that energy. Although some students have disregarded them in the past during mass movements, such action was taken without intensely focused recruitment efforts by the organizations themselves, as well as in a differing, more highly-engaged climate than contemporary America. An



organization with a reputation for efficacy as large as that of the ACLU could help mitigate this trend, developing and preserving a new generation of civil liberties activists across the nation's universities.



## **Chapter 1: A History of the American Civil Liberties Union**

### **Origins of the Organization: 1914-1920**

The American Civil Liberties Union, although apolitical, was born out of an organization formed to thwart United States involvement in World War I. The American Union Against Militarism (AUAM) began leading the fight against intervention in 1914, but with their efforts becoming futile after a congressional declaration of war in 1917, new avenues were explored to further their goals. Included were opposition to the draft and assistance to conscientious objectors (COs) – those opposed to fighting for moral reasons. Led by Crystal Eastman and Roger Baldwin, the AUAM lobbied Congress against passage of the draft. In their view, if enough people did not volunteer to fight in a war, it should be taken as a sign of democratic opposition and the conflict should not be fought. Further, conscription denied people the right to avoid participation on the basis of their religious freedom, violating principles inherent in the Bill of Rights.<sup>1</sup>

Their efforts were in vain; by mid May Congress passed the Selective Service Act. After the legislative debacle the organization was split. Wartime opposition was uncommon at the time and many of its leaders hoped to maintain credibility for post-war talks with the Wilson administration. After much discussion, however, they created the Civil Liberties Bureau (CLB) in early July. Its mission would soon be shaped in response to pressing events. The United States Post Office had begun to refuse delivery of materials that criticized the war, including materials from the AUAM. Again, despite

their best efforts – even including submitting the materials for review prior to shipping – the group was unable to get the policy reversed.<sup>2</sup>

By October the AUAM had collapsed and Eastman and Baldwin formed the National Civil Liberties Bureau (NCLB) to carry on the work of the CLB. Faced with immense censorship and little legal recourse, they began to publish literature to add to the debate about free speech in a wartime environment. The NCLB also took up the CO issue once again. The conditions faced by COs who opposed any participation to aid the war effort were brutal at the time. They were jailed, beaten, forced into labor and often put on diets of bread and water while in captivity. The NCLB tried to field complaints and advise those who opposed participation in the war, along with efforts at lobbying the administration, but once again their actions were futile. Demonstrating that fact, Roger Baldwin even ended up serving time in jail for avoiding the draft (although his conditions were considerably better than many of his counterparts).<sup>3</sup>

The Espionage Act was passed in 1917 as well, making it a crime to “obstruct the recruiting or enlistment service of the United States.” The Justice Department regarded all criticism of the war as potentially dissuading others from enlisting, and in 1918 the Sedition Act passed through Congress, codifying that position into statute. Its enforcement was disconcerting. Federal agents and private citizens working through the American Protective League seized records and arrested substantial numbers of individuals without warrants. In one notable incident, the government seized and burned all the records of the IWW (International Workers of the World), a prominent labor group. The NCLB called for fair trials, but almost every war critic ended up with extended prison terms. One lucky exception, the IWW’s Elizabeth Gurley Flynn, later

went on to found the ACLU with Baldwin and do civil liberties work for years afterwards. Even the NCLB was not safe. The FBI and military intelligence began spying on the group and even convinced their landlord to evict them.<sup>4</sup>

By 1919 the war had ended, but the legacy it would leave was far from over. The Supreme Court began reviewing many of the convictions under the wartime measures and two significant cases appeared that year. A Socialist Party leader named Charles Schenck had been convicted for mailing antiwar leaflets to draft-aged men. The court unanimously upheld his conviction, saying that his actions created a clear and present danger given American involvement in the war. The second case involved Jacob Abrams, who was convicted of violating the Sedition Act for distributing information opposing American military intervention in Russia. The United States had sent 7,500 soldiers to try to thwart the Bolshevik Revolution, and even though Russia was not an enemy in WWI, the court upheld the decision on a seven-to-two vote. Oliver Wendell Holmes wrote a famous dissent, however, creating hope for the future. He argued that democratic society found truth best through the free exchange of ideas and warned that limiting views that were unpopular could be very detrimental to that process.<sup>5</sup>

By 1920, fear of communism gripped the nation. One of the major excesses resulting from it was the Palmer Raids. Police targeted groups with radical political beliefs, breaking into their homes, smashing their furniture, beating them and arresting their members. Over 4,000 people were taken into custody, often without warrants, and suffered prolonged detention before receiving their day in court. Immigrants with such views were deported, including Emma Goldman and Alexander Berkman. Recently released from jail, Baldwin sought to join the IWW to fight back, but his friends



convinced the Ivy League graduate to do something else, head the first permanent group in America to impartially defend civil liberties: the ACLU. With his design and plans in action, the executive committee of the NCLB chartered the group a week after the raids and signaled a long and productive career ahead for Roger Baldwin.<sup>6</sup>

### **Establishing a National Presence: 1920-1941**

The ACLU started out with a very different approach from its modern methods of operation. Noticing the hostility of the courts to civil liberties positions, it focused on direct action techniques designed to garner publicity and alter the public dialogue on issues. Baldwin may not have joined the labor movement, but he soon used some of its tactics and came quickly to its defense. The ACLU frequently participated in marches that had been banned by local officials and read the First Amendment aloud to audiences before police broke up the events. They also worked behind the scenes to lobby President Harding about those who had been imprisoned for political opposition to the war, securing the commutation of 25 sentences. Finally, the ACLU lobbied local officials and even used litigation when necessary, defending the free speech rights of the KKK, communists, and even Henry Ford. Although many of their clients wished to restrict opposing views, the ACLU defended the right of people to express their opinions regardless of content. As long as they simply spoke and did not commit acts of violence, the organization came to their defense.<sup>7</sup>

Their actions drew significant ire from political and social figures of the day, however. The group was labeled as a communist front, and by 1925, many would label it godless as well. The famous Scopes Monkey Trial in Tennessee provided the greatest publicity the

organization had ever received. The state passed a law forbidding the teaching of evolution earlier in the year, and in an effort to change it, John Thomas Scopes taught the theory to his class. Facing prosecution, the ACLU quickly took the case, with Clarence Darrow serving as counsel and Dudley Malone, Arthur Hays, and John Neal helping out. On the other side of the aisle was the nation's most prominent evangelical leader – William Jennings Bryan – who agreed to serve as prosecutor. The atmosphere was electrifying, with over 100 newspapers attending and locals posting signs around town like “Read Your Bible Daily” and “Prepare to Meet Thy Maker.” The ACLU planned to challenge the law on constitutional grounds because it used the Bible as the standard of truth – violating the establishment clause. It also was vague in the view of the ACLU due to differing interpretations of the text and was unreasonable in the face of contemporary science. To demonstrate the last point, they had a host of expert witnesses lined up to testify, including scientists from some of the best universities in the country, but were dealt a major setback when the judge did not allow their testimony.<sup>8</sup>

Forced to come up with a new defense in a short period of time, Darrow decided to put Christianity itself on trial. He even called Bryan to the stand and challenged him on the literal truth of Jonah and the whale, Noah's ark (asking if fishes also drowned) and the sun “standing still” for Joshua. Although Bryan was embarrassed, he was ultimately successful. The eight-day trial ended up with a conviction when the jury ruled that Scopes violated the law. Nine days later an exhausted Bryan died of heart failure, but the ACLU organized an appeal nonetheless. The state supreme court reversed the conviction on a procedural error and the law was never enforced again. Over the next two years



similar proposals were defeated in 22 states. Unfortunately, the trial also had a chilling effect as well and many teachers stopped addressing evolution for fear of reprisal.<sup>9</sup>

After the trial, Baldwin led a successful free speech march in New Jersey on behalf of union members who had been denied the ability to peaceably assemble. The group marched with American flags and was promptly arrested after Baldwin began reading the First Amendment in front of city hall. The tactic worked. The police allowed several marches afterward and to everyone's amazement, the New Jersey Court of Errors and Appeals struck down his conviction as a violation of free speech rights. Following closely on the first major victory at the state level, the Supreme Court's *Gitlow v. United States* ruling aided the issue for the first time on the national stage. At the time of litigation the court had never held the Bill of Rights to be applicable to the states; it was simply a document related to the national government. With the aid of ACLU attorneys, *Gitlow* changed that view when the majority opinion held that the due process clause of the Fourteenth Amendment extended free speech rights to the states. Although the conviction of Benjamin Gitlow was upheld, the ruling paved the way for future victories.<sup>10</sup>

By 1931 the Supreme Court became more receptive to First Amendment claims, with two major victories by the organization. In *Stromberg v. California*, an appeal handled by the ACLU and International Labor Defense, the court struck down a California statute outlawing the display of a red flag, banner or badge as a sign of opposition to the government. Later that year, in *Near v. Minnesota*, it extended freedom of the press to the states by striking down a Minnesota law that was used to prosecute a journalist who leveled charges of corruption against major political figures in a local paper. Although

the case was taken by the publisher of the *Chicago Tribune*, it upheld major principles articulated by the ACLU in years past. Striking down prior restraint, the ruling proved to be a significant development for future journalists nationwide.<sup>11</sup>

In another piece of ACLU litigation – *Powell v. Alabama* – the Sixth Amendment was incorporated to the states. After being tried and convicted of rape by an all white jury, the Supreme Court held that the defendant was denied adequate counsel by not having an attorney and granted the right in capital cases. A year later the group also won a federal case against U.S. Customs for banning *Ulysses*. As a result of its efforts, censorship was becoming less popular for government officials than in previous times.<sup>12</sup>

Over the next few years the ACLU was able to convince the court to defend the rights of communists, allowing peaceable assembly for lawful purposes and protecting membership in a political party. The Roosevelt Court ended up creating a significant body of civil liberties law, striking down a number of free speech infringements, protecting the right to picket, and upholding the free exercise rights of Jehovah's Witnesses by allowing their children not to salute the flag out of religious objection. With each new decision garnering a significant amount of press, public opinion began to become more supportive of civil liberties as well. Yet public opinion is a double edged sword. In states of fear and panic, as the group would soon find out, public opinion could become equally hostile toward the Bill of Rights.

### **WWII and the Cold War Hysteria, a Dark Time for Civil Liberties: 1941-1954**

The ACLU was faced with some difficult choices before the outbreak of the Second World War. It had always defended the rights of everyone, including communists, but

that action was increasingly perilous in the face of public opinion. The rise of domestic fascist groups was equally horrifying, and domestic developments forced the group to do some serious soul searching about its principles. Major group members were opposed to defending free speech rights for groups that had no respect for the Constitution. Yet after much debate, the organization published *Shall We Defend Free Speech for Nazis in America?*, setting the record straight as to where they stood. In it they noted that restricting Nazi's rights was a dangerous principle and could have disastrous effects for free discourse. Outlawing racist or religious hatred could be abused to include numerous other groups, as WWI measures bore out. Such laws were often used to target leftists and other citizens with unpopular ideas. Prosecution of groups for their political beliefs would create more sympathizers, and without defending Nazis, the ACLU would lose its credibility as an agent for defending the First Amendment.<sup>13</sup>

The group did endorse a few restrictions, however, such as forbidding masked parades and certain time, place and manner regulations associated with protests. All across the country, though, townships and jurisdictions were growing afraid of intolerant speech. Many passed "group libel" laws that punished advocacy of hatred against any group on the basis of race or religion. In a notable New Jersey case, the ACLU had an ordinance struck down that was used to prosecute a Jehovah's Witness for distributing "anti-Catholic" and "anti-Jewish" leaflets. Although the fascists were intimidating, the real fear in the country centered on the communist threat. As in times past, responses to that fear would be far overreaching and threatening to the rights of all Americans. It was here that the ACLU would prove most vulnerable.<sup>14</sup>



During the Great Depression Baldwin had become more radical in his ideology and worked with communists and groups with communist ties. In addition to seeing civil liberties as a good unto themselves, he saw them as a way to advance a radical agenda by securing its dialogue in the public sphere. In addition to working on the cases mentioned earlier, the ACLU, under the direction of its leader, founded more affiliates nationwide to aid in the struggle as well. These actions would come back to haunt the group in the late 30s. The House Un-American Activities Commission (HUAC) was established in 1938 and its chair, Martin Dies, soon used the platform to fan fears of communism all across the nation. Dragging people before the commission, he would berate them, charging them with allegations provided by unknown sources and fail to let the accused cross-examine those witnesses. The committee even expressed uncertainty about whether or not the ACLU was a communist front.<sup>15</sup>

The stir created by HUAC also allowed for the passage of the first peacetime sedition law in American history. Called the Smith Act, the measure banned membership in any group that advocated overthrowing any government in the United States and forbade advocacy of that goal as well. In that line of thought, governments across the nation started requiring loyalty oaths – making individuals attest that they did not advocate such ideas – as a condition of employment. Colleges were required to submit to the procedure, as were high schools and many municipalities. The ACLU, highly divided on the issue, expressed reservation at firings based on political affiliations but did little to combat them. Cowed by criticism of their group, they even adopted the same standard for their board of directors, purging a founding member for her communist beliefs.<sup>16</sup>

Although the elimination of Elizabeth Gurley Flynn was a complete abandonment of their principles, the group did accomplish some good in the period. They got communist candidates seated in states where they won elections and began to combat the worst civil liberties violation during WWII – the internment of 120,000 Japanese Americans. On February 19, 1942, FDR signed Executive Order 9066, which allowed for the forced relocation of Japanese Americans to concentration camps as a national security precaution. Incensed by the development, Baldwin immediately began looking for clients to represent in an effort to overturn the measure. Two main candidates came forward after extensive searching: Gordon Hirabayashi and Fred Korematsu. Hirabayashi was a Quaker, a registered conscientious objector, and a senior at the University of Washington. Denying repeated requests by his mother to comply with the order, he decided to stand up for something greater than himself and violate the law. Fred Korematsu was also a man of high repute, but did not turn himself in voluntarily. Despite altering his appearance with plastic surgery before his planned wedding with a Caucasian woman, he was picked up by authorities and charged with violating the measure.<sup>17</sup>

ACLU cooperating attorney Mary Farquharson and San Francisco affiliate member Ernest Besig agreed to take their cases and Baldwin assured them national ACLU support. Unfortunately, he was unable to convince the board that the order was wholly unconstitutional. The ACLU did approve four grounds for challenging FDR's program, however: lack of clear military necessity, racial discrimination, lack of individual hearings, and detention. Although these would suffice in an *amicus* brief, they severely limited the options available for the attorneys, forcing them to withdraw from the cases if

they were to adhere to the ruling. Disheartened, Baldwin informed the two to disassociate themselves from their clients and offered to help Farquharson raise money to secure counsel for Hirabayashi. She complied, but Besig, determined to challenge the measure, refused to follow the request.<sup>18</sup>

As the Hirabayashi case reached the Supreme Court, Besig realized that the counsel secured by Farquharson lacked the skill to handle the case and asked for assistance from the national office. They agreed and challenged Hirabayashi's detention on the basis of a lack of military necessity, violating due process rights under the Fifth Amendment, and racial discrimination under the Fourteenth Amendment's equal protection clause – which had been applied only to the states by that point. The Northern California affiliate challenged the constitutionality of the order itself – in strict violation of the ACLU's mandate – on behalf of Korematsu. Regrettably the Court upheld both convictions, deferring to presidential authority. Although the *Hirabayashi* ruling was unanimous, three justices dissented in *Korematsu* and noted that the lack of due process set a dangerous precedent for the future of presidential power.<sup>19</sup>

By the time the war was winding down, however, there was a public backlash against the order. Americans started to view it as a mistake and eventually detainees were released. Fear of communism remained, though, and the cold war soon brought with it abuses of epic proportions. One of the first major responses was the federal loyalty program established in 1947 by President Truman. It allowed the government to deny employment to anyone reasonably believed to be involved in activity disloyal to the government of the United States – including membership or affiliation with subversive or communist organizations. The ACLU actually supported the idea of a loyalty program,



seeking to distance itself from communists, but expressed reservations at creating a “blacklist” of organizations and lack of adequate due process protections, such as not being able to confront accusers. The list – created by the attorney general – turned out to literally ruin people’s lives. Guilt by association was the order of the day, with the people linked to the 203 named organizations being denied everything from veteran’s benefits to public housing. The ACLU attempted to challenge the due process aspects of the list in court, on behalf of an anti-fascist group, but never challenged it outright in a concession to moderates on the board of directors. As a result, it remained until 1974.<sup>20</sup>

The House Un-American Activities Committee also became a resurgent force. It subpoenaed vaguely defined “subversives,” making accusations without providing an opportunity to cross-examine the people that actually provided the basis for them. It also required people to name names of other communists. Acting much as the HUAC, the Senate drug people before it on the basis of political beliefs and hearsay, failing to provide for adequate due process protections and permanently damaging their reputations. Even people who took the Fifth Amendment were often deemed guilty and fired from their jobs. Perhaps the most famous government figure in the witch hunt was Senator Joseph McCarthy, who claimed to have a list of known communists working within the government. In the absence of consensus in difficult times, however, the national ACLU did little to combat the destruction of the right to remain silent. In the midst of all the conflict, Roger Baldwin was even forced out as the leader of the organization. Fortunately, the New York Civil Liberties Union (NYCLU) affiliate did not sit around so idly. It filed an *amicus* brief on behalf of a schoolteacher fired for not

taking a loyalty oath, with the Supreme Court ruling that the petitioner was at least due a hearing before dismissal.<sup>21</sup>

By 1953 and 1954, the elements within the ACLU who had fought between a compromise position and an absolutist position on the Bill of Rights had their final showdown. In a long confrontation between the Biennial Conference attendees – essentially affiliate members – and the more conservative board of directors, the conference attendees emerged victorious in securing more stringent policies to defend civil liberties. As a result, many conservative elements of the board resigned. By 1954, McCarthy had also largely been discredited. After going after the military and being attacked by CBS' Edward R. Murrow for his tactics throughout the era, he was censured by the U.S. Senate in 1954. The action marked the beginning of the end for a challenging era of history and an even less flattering chapter of the ACLU's efforts to stand up for its founding principles.<sup>22</sup>

### **Emerging From the Shadows, Massive Advances for Civil Liberties and Civil Rights: 1954-1974**

If the past period had been marked by failure and an unwillingness to stand up for principles in the face of popular opposition, the next two decades could be characterized by the greatest growth of the organization to date and one of the largest advancements of civil liberties and civil rights in the nation's history. Baldwin's replacement, Patrick Murphy Malin, sought to move the ACLU away from its elitist foundations, creating more membership and affiliates and securing the long term viability of the group. The ACLU had only about 8,000 members in 1950, but by 1955 that number had swelled to over 30,000.<sup>23</sup> By 1974 that figure would swell to over 275,000.<sup>24</sup> Significant bodies of

law would be developed by the Warren Court, with the ACLU's direct participation, advancing religious liberty, free expression, civil rights for African-Americans, voting rights, due process protections, privacy rights and the rights of women. Even checks and balances were reaffirmed on the executive branch.

The first few years of the era were a period of reflection for the organization. At issue was the role of religion in public life and its relation to the power of the state. One school of thought suggested that America was largely a Christian nation and the free exercise rights of the majority may prohibit strict separation. The other side viewed the establishment clause as an absolutist position, completely forbidding state sponsorship but mitigated by the free exercise clause, which guaranteed the religious rights of individuals. Ultimately, the ACLU arrived at the second position, forming the Church-State Committee in 1959. In 1961, it won a victory against a Maryland law that required public officials to take an oath that they believed in God and by 1962 the ACLU faced the most explosive establishment clause issue to ever come before the Court: school prayer.<sup>25</sup>

It was actually the NYCLU that challenged a New York policy that required a "nondenominational" prayer in public schools. The ACLU had actually feared that it would be upheld, because it replaced the Lord's Prayer as a compromise for those that objected. Much to their surprise, the Supreme Court struck down the policy in an eight-to-one decision. The *Engel v. Vitale* verdict was careful to draw a distinction between being anti-religious and letting the government sponsor religion, stating, "It is no part of the business of government to compose official prayers."<sup>26</sup> A year later the Philadelphia ACLU challenged the Pennsylvania Bible-reading law in *School District v. Schempp*.



Co-heard with a case brought by a famous Maryland atheist, the court once again upheld the rights of religious minorities against the majority. In another eight-to-one decision, the majority held that “in the relationship between man and religion, the State is firmly committed to a position of neutrality.”<sup>27</sup> Not surprisingly, there was a conservative backlash.

Seventy-five members of Congress introduced bills or constitutional amendments to return government-sponsored prayer to public schools. North Carolina Senator Sam Ervin even remarked that the court had made God unconstitutional. In response, the ACLU began an extensive public education and lobbying campaign and was able to successfully use committee hearings as a platform for its views. When all was said and done, the constitutional amendments failed to pass either house of Congress and the court’s decision was upheld. What’s more, empirical research at the time suggested that schools were overwhelmingly enforcing the mandate.<sup>28</sup>

While religious freedom was expanding, free expression rights were also making a comeback, slowly recovering from cold war excess. Not all cases the ACLU took were victorious, but tremendous inroads were made. Noting past government actions following from the suppression of unpopular speech, the ACLU took up the cause once again. The first major advance involved film. In the 1950 *Miracle* case – for which the ACLU provided an *amicus* brief – the Supreme Court held movies to be constitutionally protected speech for the first time in American history. Previously, they could be regulated as commercial and were frequently restricted based on popular opinion. After the decision, censorship of the movies virtually ceased, and Hollywood’s longstanding

Production Code, which was a form of self censorship, became obsolete and abandoned as moviegoers supported films without its seal by voting with their wallets.

In 1957 the ACLU was also able to successfully argue for the repeal of a Michigan law forbidding public sale of material containing “obscene language” that tended to incite minors to violence or depraved acts. In one of its most forceful statements, the majority opinion held that “reducing all literature to a level safe for children was to burn down the house to roast the pig,” meaning it created substantial social harm far in excess of its benefit.<sup>29</sup> By 1964, the Supreme Court reached its zenith in defense of First Amendment rights: *New York Times v. Sullivan*. The decision was a product of the civil rights movement, occurring when activists took out an ad in the *Times* charging Birmingham, Alabama officials with “a wave of unprecedented terror.” The police and fire commissioner sued for libel, but the court struck down their request, requiring actual malice for a successful finding of libel against someone who criticizes a public official. Justice Brennan offered the following, “We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open. The Constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered.” The ACLU’s position had finally been adopted.<sup>30</sup>

Civil rights victories began to join civil liberties as well. With the NAACP arguing most of the cases and the ACLU, the American Jewish Congress and other organizations joining in with *amicus* briefs, African-Americans made tremendous inroads toward equality. In *Henderson*, *Sweatt* and *McLaurin* the court struck down segregation in interstate travel and two law schools. These 1950 decisions paved the way for *Brown v.*

*Board of Education* in 1954 – a ruling that overturned the separate but equal standard laid out over a half century earlier and included an ACLU *amicus* brief as well. The ACLU also joined with the usual suspects in fighting for other civil rights, particularly voting rights. In this fight, however, the group played a much more prominent role.<sup>31</sup>

The ACLU first took up the issue of legislative apportionment – the drawing of voting district lines for elections – during WWII. It aided Northwestern political science professor Kenneth W. Colegrove challenge Illinois voting district lines on the basis of the equal protection clause of the Fourteenth Amendment. Urban voters vastly outnumbered rural voters in their districts, which was undermining the electoral influence of urban, particularly black, populations. In the 1947 *Colegrove* case, however, the court decided that the issue was a political question, not to be decided by the judiciary. A few years later, however, the Roosevelt Court seemed more friendly toward redressing the issue. In that light, the ACLU of Minnesota was able to convince its state legislature to redraw their lines under threat of lawsuit. Seeing their success, Tennessee activists requested and obtained the affiliate's legal brief, and in *Baker v. Carr* (1962) were able to get the court to rule apportionment as a justiciable issue. That outcome led to the most famous case in voting history, *Reynolds v. Sims* (1964), which established the one person one vote rule. It was litigated by the future head of the ACLU's southern regional office, with an *amicus* from the group and others from allies in the coalition. After winning the case, Chuck Morgan worked in the southern office for many years, overturning jury exclusion based on sex and race and ensuring the implementation of civil rights legislation and Supreme Court rulings in the South. In fact, it is not a stretch to say that



Morgan was literally responsible for the election of hundreds of African-Americans to office.<sup>32</sup>

Perhaps the biggest impact of the ACLU during this period was the protection of due process rights. Fighting cold war injustices, the group was able to get the Supreme Court to drastically limit the Smith Act (peacetime sedition act) by overturning the convictions of many of the Communist Party's minor leaders for being on the basis of abstract doctrine, not incitement. It also persuaded the court to overturn a HUAC contempt conviction of a labor official who refused to name names on the basis of his Fifth Amendment due process rights. The news was not always good, however, as the court ruled against the ACLU in 1959, upholding a conviction of a HUAC witness who refused to talk based on First Amendment grounds and in 1961, allowing the membership clause of the Smith Act to stand as being sufficient to warrant a conviction in cases where membership was known by the defendant.<sup>33</sup>

Although these cases were important, the ACLU had the most profound influence on the three most important Supreme Court cases dealing with police encounters in the 1960s: *Mapp v. Ohio* (1964), *Escobedo v. Illinois* (1964) and *Miranda v. Arizona* (1966). *Mapp* came into existence after the police forced themselves into Dollie Mapp's home looking for a suspect, and after discovering that he was not there, rifled through her things and arrested her for obscene literature. The Supreme Court ruled that the search was illegal, in violation of the Fourth Amendment, and could not be used against her in a court of law – in other words, they established the exclusionary rule. The majority opinion was written by Tom Clark, who had personally requested and read an extensive ACLU report of police lawlessness entitled *Secret Detention by the Chicago Police* and

followed the logic presented in the ACLU of Ohio's *amicus* brief in the ruling. The case was important because, for the first time, the court incorporated the Fourth Amendment into the Fourteenth Amendment, providing legal protection against unreasonable searches and seizures for all Americans.<sup>34</sup>

*Escobedo* dealt with the Sixth Amendment right to counsel. The issue reached the court a year after the *Gideon* decision – a case which the union tried to take, but because of Mr. Gideon's lack of cooperation, was required to submit an *amicus* brief instead. The ruling held felony defendants had a right to an attorney; the *Escobedo* conflict was over when that right began. An attorney from the Illinois affiliate argued the case, successfully convincing the court that the right started as soon as accusatory questioning commenced. In *Escobedo*'s case, he had asked for a lawyer but was denied one and held until he later confessed to a crime. The last major case in which the organization was involved – *Miranda* – was the biggest and most controversial due process decision of the era. The ACLU's *amicus* brief linked the Fifth and Sixth Amendment, arguing that a suspect had not only a right to a lawyer, but the right not to incriminate himself or herself. Decided five-to-four, the court agreed and required police to issue a warning of rights to suspects.<sup>35</sup>

In addition to all the achievements laid out thus far, the ACLU was able to extend women's rights as well, including the right to privacy. The organization brought the first legal challenge against a Connecticut law outlawing birth control in 1940, and in the 1961 *Poe* case, conservative Justice Marshall Harlan wrote a thirty-three page dissent arguing it to be an unjustifiable invasion of privacy. When the issue reached the court again in 1965 with *Griswold v. Connecticut*, Justice Douglas's majority decision

interpreted the First, Third, Fourth, Fifth and Ninth Amendments to contain the “penumbras” and “emanations” of the right to privacy. The First Amendment right to free association, allowing people to decide who they wanted to be around; the Third’s prohibition on quartering troops, preventing government soldiers from coming into one’s home without consent; the Fourth Amendment’s protection against unreasonable searches and seizure, establishing a zone that the government cannot rightfully penetrate without probable cause; the Fifth Amendment protection against self incrimination, allowing people to keep their personal thoughts to themselves if they choose; and the Ninth Amendment’s assertion that the Bill of Rights is not limited to those specifically stated – all served to reflect personal autonomy and the right to be left alone in the absence of sufficient justification. Applying to birth control, the ruling meant that the body is the domain of the individual and the government has no rightful claim to prevent women from avoiding childbirth should they wish to be sexually active. This ruling provided the basis for *Roe v. Wade* eight years later – which, perhaps ironically in a contemporary context, was decided by a conservative court. *Roe* established the constitutional right to an abortion, but an immediate conservative backlash ensued. The ACLU responded by setting up the Reproductive Freedom Project a year later. Little did it know how much work would be cut out for it over the next few decades.

The last major issue confronted during the period involved the Vietnam War, including free speech rights and the unchecked power of the executive branch. The organization successfully defended the right of a high school student to wear an armband in symbolic opposition to the war, helped expand the definition of free speech to an “imminent lawless action” standard in *Brandenburg v. Ohio*, which held that the



discourse must incite immediate lawlessness to lack First Amendment protection, a drastic departure from the cold war era; and extended the rights of conscientious objection to people who are not religious but hold humanist values. Also the First Amendment front, the ACLU *amicus* brief in the *New York Times v. United States* (1971) helped establish the suspect nature of prior restraint of speech, with the court holding that the First Amendment was intended to prohibit the suppression of speech embarrassing to the government. In this case the publication of the Pentagon Papers was the embarrassing material in question. Throughout the period, the organization also defended many New Left protesters in their effort to espouse anti-war viewpoints, but it did draw a firm line in regard to obstructionism, property destruction and violence. The ACLU took cases only from people who broke laws the organization believed to be unconstitutional, but did not defend those who broke laws to prevent the constitutional rights of others, such as supporters of the war, from being exercised.

Over the objections of moderate members, however, it declared the Vietnam conflict unconstitutional because it lacked an explicit congressional declaration of war – a move widely seen as political by its opponents. Although the Supreme Court did not adopt that view, holding that congressional appropriations had expressed support for the war, the group's membership doubled in the two years after the announcement. Also in the period, the ACLU became the first national organization which called for Nixon's impeachment in 1973, a time where the evidence seemed to show that the president had violated the law, and if not held accountable, would threaten the very constitutional structure of the American political system. In addition to lawlessness with regard to Watergate, his administration had spied on political groups and withheld information



from the press, threatening the First Amendment. Taking out an ad in the *New York Times* to that effect, the ACLU was able recruit 25,000 members in 1973 alone.

Ultimately, their actions were successful and Nixon resigned, with substantial reforms following shortly thereafter. The Freedom of Information Act passed in 1974, allowing for a more open government; and substantial revelations came out in the Church Commission that exposed the extent of illegal FBI activity directed toward ordinary Americans who disagreed with the government. Given the developments, the group was optimistic about the future. Little did they know, however, that the civil liberties and civil rights won during this period had set into motion a powerful conservative movement that would come to dominate politics for the next quarter century and threaten the gains of the era.<sup>36</sup> Religious liberty, free expression, civil rights for African-Americans, voting rights, due process protections, privacy rights, the rights of women and basic checks and balances would soon be in serious jeopardy once again.

### **The Conservative Backlash: 1976-2000**

The first major action taken by the ACLU during this period drew significant ire from many of its newfound liberal supporters. Yet once again, it was just another example of the organization's mission to defend the rights of everybody, even the most scurrilous characters. In the summer of 1976, the National Socialist Party of America (NSPA) frequently engaged in demonstrations in Chicago's Marquette Park. About a dozen marched around in Nazi uniforms, shouting hateful racist diatribes to all that would hear them. After violence erupted during one demonstration, the Chicago park counsel put a stop to their events by enforcing a little-known ordinance requiring \$250,000 in liability

insurance for anyone who wished to demonstrate at the park. The ACLU immediately took the case, holding that the measure violated the free speech rights of NSPA and other groups. Representation notwithstanding, their leader, Frank Collin, was not content to sit idly by while the case slowly made its way through the courts. Instead, he sent out a letter requesting a permit to protest to a dozen or so local communities. The only one to respond was Skokie, Illinois, which required him to get a \$350,000 liability policy before the event. Collin wrote back, notifying them that he would protest the requirement on the steps of the city hall, and surprisingly, they initially agreed to let the demonstration take place.

After local Jewish community groups protested, however – and half of the 70,000 residents were Jewish, with over 1,000 actually surviving the Holocaust – the demonstration was banned. In response, David Goldberger, a Jewish attorney for the state ACLU affiliate, agreed to take the case. Although he obviously hated Collin's views, he argued that it was a classic First Amendment issue. Much to his chagrin, however, the judge upheld the injunction and was supported by the state appeals court a day later. Over the next several days, Skokie passed numerous ordinances to keep Nazis from speaking. One even went so far as to ban symbols offensive to the community. By this point, the publicity surrounding the conflict had grown to immense proportions, and the negative reaction from the public had as well. People from across the country attacked the ACLU, even calling their offices to berate them. Membership declined as the legal processes dragged on, but the organization still refused to relent in their defense of principle. As the previous years had demonstrated, suppressing the rights of an unpopular minority threatened the rights of everyone. Eventually the state supreme court

agreed. They concluded that “the display of the swastika cannot be enjoined under the fighting-words exception to free speech, nor can anticipation of a hostile audience justify the prior restraint.” Yet even with the victory and all the hullabaloo surrounding it, the NPSA never even protested in Skokie. They did, however, protest in Chicago and were met with thousands of counter-demonstrators and heavy police protection. As it should be, bad speech was countered with better speech, and everyone’s rights were protected in the process.<sup>37</sup>

Ira Glasser took over the organization in 1978 amid a major decline in membership. In addition to the Skokie fiasco, members who had joined to fight Nixon’s policies were renewing their support at a tepid pace. That problem would soon change, though, with the election of Ronald Reagan and the beginning of the conservative revolt. The president’s social agenda included banning abortion, restoring school-sponsored prayer, outlawing pornography, stopping the Equal Rights Amendment (ERA), fighting gay rights and eliminating the exclusionary rule and the Miranda warning. It was clear the organization would have to go on the offensive to insure these basic liberties.

Its first major efforts dealt with the role of religion and the state. In 1981, Arkansas passed a law requiring creationism to be taught equally alongside evolution in public schools. Challenging the law on behalf of twenty-three plaintiffs, including parents, teachers and national religious organizations, the ACLU argued that it violated the establishment clause because it advanced a certain religious creed. They called in scientists as expert witnesses and on January 5, 1982, the Little Rock court ruled in their favor, noting that “[the ordinance] was simply and purely an effort to introduce the Biblical version of creation into the public school curricula.” Undeterred, Louisiana



joined in, passing a similar but more craftily written law. Set to take effect in 1983, the ACLU addressed this measure as well. By 1987 their challenge reached the Supreme Court, and to the surprise of many, met a similar fate. In a seven-to-two decision, the court ruled the law unconstitutional for holding the “pre-eminent” purpose of advancing the religious creationist story.<sup>38</sup>

Prayer in public schools came on the radar almost as quickly as creationism. Reagan personally endorsed a constitutional amendment to restore the practice, but the ACLU quickly mobilized a coalition of opposition to the measure, leading to its 1984 defeat. They were also able to defeat an Alabama law permitting a moment of silence for meditation or prayer that allowed teachers to lead “willing students” in a prescribed prayer to “almighty God” when the Supreme Court ruled in 1985 that the measure violated the establishment clause. Unfortunately, the ruling also left the question unresolved as to whether moments of silence were constitutional.<sup>39</sup>

The New Right quickly set its sights on abortion rights as well. Reagan had declared in no uncertain terms that human life “begins at the moment of conception” in 1981 and Congress immediately responded by introducing two constitutional amendments to that effect. North Carolina Senator Jesse Helms put forth a measure that stated exactly that, without exceptions for abortion procedures whatsoever, while another amendment provided an exception for a woman’s life. Public opinion polls at the time suggested that 60 percent of the public favored keeping abortion legal, with 20 percent favoring it in unlimited circumstances and 20 percent opposing it in all cases. By 1983, the amendments had not even come to a vote, and an alternative proposal, to amend the Constitution to read that “a right to abortion is not secured by this Constitution,” failed



fifty to forty-nine. Eventually, the conservative movement turned against itself, arguing over whether or not all cases should be banned or exceptions should be made for rape and incest, and the ACLU emerged victorious in defending *Roe*. One area where it did fail, however, was convincing Congress to provide federal funds for abortion services, and since it was also unable to convince courts that such bans were unconstitutional, access to safe and legal abortions was severely restricted for the poor.<sup>40</sup>

The ACLU did have some success in the courts, although it also suffered a major setback as well. In 1983, the Supreme Court struck down an Akron, Ohio ordinance requiring a 24-hour waiting period before obtaining an abortion that also compelled doctors to inform patients that life begins at conception. The majority opinion was based on the ground that it created an undue burden on access to safe abortion services. In another case, however, the organization did not fare so well. The U.S. Court of Appeals for the Eighth Circuit upheld a parental notification law requiring minors to tell both their parents before obtaining an abortion despite the lower court's ruling that it created the choice of trauma at home, in the courthouse or unwanted motherhood. Not surprisingly, six of the seven judges in the majority were Reagan appointees.<sup>41</sup> The ACLU broke from its women's rights coalition on many occasions throughout the period, however, fighting for the rights of anti-choice protesters to picket abortion clinics. In Washington and Michigan it took cases on their behalf, successfully litigating against a Michigan ordinance that prohibited harassing, annoying, or photographing patients.

The ACLU also had to significantly deal with civil rights issues facing African-Americans. The Reagan Administration was opposed to a renewal of the Voting Rights Act and, in a number of cases, failed to enforce existing civil rights laws. The

organization was undeterred, however, and worked with other civil rights groups to successfully renew the Act in 1982. It also enforced the law when the Reagan administration failed to do so. By 1988, the head of its Voting Rights Project estimated that he had filed 157 suits against 180 jurisdictions; at any given time there were 15 to 20 active suits and the group was successful in ensuring voting rights in many areas in the southern United States.

Major failings occurred in the protection of due process rights, however, with the Supreme Court upholding preventative detention – denying bail without a finding of guilt – and creating a good-faith exception to the exclusionary rule, in addition to a “public safety” exception to *Miranda*. Fortunately the court did not overturn either of the rulings, largely protecting Americans’ rights. With the cold war mentality again occupying center stage in the country, however, political groups were threatened with government assaults once again. In late 1981 Reagan issued an executive order allowing the CIA to collect information on citizens within the United States and in 1983 he authorized the FBI to do the same, this time for any group that they believed “advocated criminal activity.” The executive branch assured the public that this power was not being abused, but that assurance turned out to be in bad faith. In 1987 it became public knowledge that the FBI was spying on the Committee in Solidarity with the People of El Salvador (CISPES) without evidence of criminal activity and solely because of its opposition to U.S. foreign policy. In 1988 the FBI Library Awareness Program was exposed as well, where the bureau had asked libraries to keep records on certain foreigners suspected of being Soviet agents. Finally, in another ominous development – this one apparently designed to quash

leaks – a former naval intelligence employee was convicted for giving government documents to *Jane's Defence Weekly*.<sup>42</sup>

The onslaught showed no signs of letting up by the end of the Reagan presidency; in 1987 he nominated one of the most conservative judges of modern history to the Supreme Court. Robert Bork had criticized the *Griswold* decision in law journals – and with it the right to privacy and abortion – as well as several noted civil rights rulings affecting African-Americans. Additionally, he held that the First Amendment only protected speech that was explicitly political, substantially threatening a great deal of public discourse. In response to the substance of his opinions, the ACLU opposed his nomination, only the second time in its history it had done so with a Supreme Court nominee. Its board felt that Robert Bork's "record demonstrate[d] a judicial philosophy that would fundamentally jeopardize the Supreme Court's critical and unique role in protecting civil liberties." In states around the country, ACLU affiliates organized opposition to the nomination as well and by late October, their efforts and the efforts of other groups succeeded. The nominee was defeated fifty-eight-to-forty-one. Although Bork's defeat was a major victory for the ACLU, significant defeats were present as well. The Supreme Court ruled in 1986 that sodomy statutes were constitutional – literally preventing legal homosexuality – and in 1987 the court ruled that high school principals could censor school newspapers.<sup>43</sup>

With Reagan's term coming to an end, the 1988 presidential election came into full focus. In his bid for the office, George H.W. Bush began to attack Democratic nominee Michael Dukakis for being "a card-carrying member of the ACLU," along with other charges. The attacks had their desired results; Dukakis lost handily. The defeat was



probably due, in part, to his slow responses to certain charges, coupled with Bush's effective portrayal of Dukakis as being soft on crime. Either way, Republican control of the executive remained. With the conservative backlash remaining in full effect, many challenges would present themselves in the Bush presidency, especially those concerning crime control policy. After the advent of crack cocaine in the mid-Eighties, the nation was afraid of criminals. When issues were framed in light of privacy rights, public opinion was often supportive of civil liberties, but rights in criminal cases often elicited a negative response. In many ways, Supreme Court rulings followed this view as well. In 1989 the court upheld drug testing of all federal transportation workers, abandoning the principle of individualized suspicion. It also followed the prevailing "tough on crime" mood in two 1993 cases, ruling that a death row inmate could not seek federal habeas corpus relief despite newly discovered evidence and that such relief was also not available if there had been a constitutional error in the state court as long as that conviction had been "reasonable." On abortion, the Supreme Court dealt a major blow in 1991 when they upheld a federal law banning doctors from discussing abortion if receiving federal family planning funds, even though it did not let doctors discuss all medical options with their clients. In a major blow to social conservatives, however, the Supreme Court upheld the basic right to abortion in 1992's *Planned Parenthood v. Casey* ruling, again affirming the ACLU's position that abortion is protected by the Bill of Rights.<sup>44</sup>

With William Jefferson Clinton's victory in the 1992 presidential election, it seemed that civil liberties might fare better than in past years; unfortunately, that was not the case in many areas, particularly the death penalty, due process rights, and free expression.



Clinton supported the largest ever expansion of capital punishment – helping secure the passage of the Violent Crime Control and Law Enforcement Act as well as the Antiterrorism and Effective Death Penalty Act – and substantially aided limitation of federal habeas appeals in capital cases. Further, he approved legislation allowing immigrants to be deported without seeing the evidence against them, and other crime control policies signed into law under his administration have led to longer prison sentences. In regard to civil rights for lesbian and gay couples, Clinton bowed to Republican pressure and instituted a “don’t ask, don’t tell” policy in the military. The ACLU responded to the matter, but was unsuccessful in its challenge that the order violated free speech rights, denying the ability to talk freely, and equal protection under the law by setting a different standard for homosexuals. The president also signed the Defense of Marriage Act (DOMA) into law, which allowed states to not recognize same-sex marriages from other jurisdictions.<sup>45</sup> Despite these developments, all actions taken by Clinton were not hostile toward civil liberties. He strongly supported abortion rights and even nominated the former head of the ACLU’s Reproductive Freedom Project – Ruth Bader Ginsburg – to the Supreme Court. He also supported the separation of church and state, having the Department of Education issue official guidelines entitled *Religious Expression in Public Schools*, which were in line with the ACLU’s position of allowing students free expression rights but forbidding school-sponsored religious activity.

The ACLU triumphed in a number of free speech cases during the Clinton era as well, even though the administration sided against them from time to time. Although contrary to free inquiry and discussion, many of these problems actually arose among college campuses. With the perception of worsening race relations in the 1990s, many schools

began to pass speech codes addressing politically incorrect remarks. Seeking to forbid hate speech, many defenders of the policy contended that racist or sexist speech represents real harm and should not enjoy First Amendment protection. As they often put it, it is experienced “as a blow, not a proffered idea.” In other words, it is an assault. The ACLU, as it always has, defended the hate speech. The free exchange of ideas, no matter how offensive to others, is imperative for a free society. Such codes can criminalize constitutionally-protected discourse, in addition to not clearly defining what is or is not allowed. In one case a student was punished for saying he believed homosexuality was a disease during class. As has happened many times in the past, limitation of unpopular ideas often leads to suppression of others – depending on who is in power. So, for example, ideas attacking religious doctrine could be construed as hate speech should the influence of the religious community be strong, despite the fact that they are a vital part of public discourse on the subject. What one student may find extremely threatening might be fine to another. The best way to address hate speech is with better speech, not criminalizing and punishing unpopular ideas, which potentially make others more sympathetic toward their cause. Fortunately, the courts agreed in striking down University of Michigan and Wisconsin policies to that effect, citing their vagueness and threat to academic freedom. The Supreme Court itself was also friendly in other hate speech cases, striking down a St. Paul, Minnesota law in *R.A.V.* that prohibited “any act arousing anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.” In the last major free expression case of the Clinton presidency, in 1997, much to the president’s chagrin, the court also declared the Communications Decency

Act (CDA) unconstitutional. As it always has been, the ACLU was at the forefront in these cases once again, though this time, it was victorious.<sup>46</sup>

Overall, the period of 1976-2000 was a defensive one, with the ACLU able to maintain many of the substantial gains of past decades. Where it failed, however, was the whittling away of some principles of due process and abortion rights (particularly parental notification), as well as in securing adequate checks and balances against presidential power. Although free speech rights, religious liberty, privacy rights, abortion rights and many civil rights protections largely remained, the post-September 11th era would present what was perhaps the greatest challenge to the organization to date.

### **New Challenges: 2001-2006**

On September 11, 2001, the United States was hit with a massive terrorist attack, killing almost 3,000 Americans on their own soil. George W. Bush, having secured the presidency by a five-to-four Supreme Court decision in 2000, immediately instituted policies to thwart the terrorist threat. Unfortunately, many of these efforts seriously threatened the Bill of Rights and basic constitutional checks and balances, not to mention existing laws enacted by Congress. Equally unfortunate is the fact that many of these matters remain unresolved, making it impossible to record a definitive history of the time. Nonetheless, the ACLU has and still is combating these actions.

Forty-five days after 9/11 Congress passed the USA PATRIOT Act, a law heavily crafted by the executive branch. Some of its provisions immediately presented a number of concerns, particularly sections 213, 215 and 505. Section 213 allows government officials to conduct so-called "sneak and peek" searches without immediately notifying



the person to be searched. Section 215 permits the government to seize business records, including library and bookstore records, without probable cause or a showing of individualized suspicion. Finally, 505 essentially allows the FBI to issue its own warrants, called National Security Letters (NSLs), without judicial oversight.<sup>47</sup> Although the ACLU has lobbied Congress extensively to modify these sections of the law, it has been unsuccessful to date. Court cases, on the other hand, are ongoing.

After the attack, Attorney General John Ashcroft also modified existing standards on monitoring domestic political groups. After the Church Commission findings, the government had a stated policy of only monitoring such groups if they had reason to believe that they were engaged in criminal activity. Ashcroft changed the policy by issuing new standards that allowed the FBI to attend any meeting open to the public. Since the modification, numerous reports have surfaced of anti-war groups and environmental groups being monitored. The ACLU has long believed that individualized suspicion should be the measure for surveillance and that monitoring groups without that standard leads to abuse, particularly if it is done against political opponents. Government spying on those that disagree with its positions chills speech – intimidating those that wish to speak out – and undermines the democratic process. To date, the ACLU has been able to raise some publicity about these events, but has failed to get a policy change enacted.

The president also authorized several new National Security Administration (NSA) wiretapping programs. One of these involves – according to the president – intercepting phone calls strictly from inside to outside the United States and vice versa. The ACLU has filed a lawsuit against it on the grounds that it violates the Foreign Intelligence



Surveillance Act (FISA), which requires a warrant from a FISA court to eavesdrop on such calls and also argues that it has a chilling effect on speech by creating fear among academics, reporters and others that their phone calls overseas could be monitored. The Bush administration, on the other hand, has repeatedly claimed that the program is authorized by inherent executive power under the Constitution as commander and chief, as well as by the congressional resolution authorizing war in Afghanistan.

In May of 2006, *USA Today* also revealed that the NSA had been authorized by President Bush to create a massive database of all Americans' phone records, including what numbers were dialed and where they were dialed from.<sup>48</sup> Although the president asserts that Americans' privacy rights are being protected, the ACLU is vehemently fighting the program because it lacks any judicial oversight, potentially lending itself to serious abuse and has absolutely no basis in individualized suspicion, threatening Fourth Amendment protections. Finally, an *ABC News* report, surfacing shortly after the *USA Today* story broke, has alleged that the FBI is also compiling the same information on journalists working for *ABC*, *The Washington Post*, and *The New York Times* in an effort to locate and prosecute government officials who leak classified information.<sup>49</sup> The threat to freedom of the press is staggering.

Free speech rights – in addition to freedom of the press – have been severely threatened as well. Free speech zones have been enacted all across the country. The Democratic Convention in 2004, for example, had a free speech zone surrounded by fencing and concrete for those who wished to express opposition to the party's policies, and mass arrests occurred during protests of the Republican Convention in New York as well. The NYCLU has taken many cases on behalf of those arrested and is working with

the FBI to investigate the event.<sup>50</sup> Similarly, the ACLU of Pennsylvania has filed litigation on behalf of people who were placed further from the president than his supporters – alleging viewpoint discrimination. Numerous cases also abound in which the president has screened audiences to ensure loyal supporters and people who have worn dissenting t-shirts or were opposed to his views were either removed from the event or not granted admission. In addition to hindering free discourse, such policies create skewed visual impressions of popular support in the media – when pictures of the events are shown – and have often marginalized those with dissenting views. In America, the ACLU believes, all opinions have an equal right to be expressed and government cannot give preference to the expression of one view over another.

Detention policy has also been a major concern of the ACLU in the post-9/11 Bush presidency. George W. Bush, by executive order, declared the right to detain United States' citizens, including Jose Padilla and Yaser Hamdi as "illegal enemy combatants," throughout the duration of the war on terrorism – in other words indefinitely – and without access to a lawyer or a trial. The ACLU filed *amicus* briefs as their cases reached the Supreme Court in 2004. In the *Padilla* case the Supreme Court ruled that the suit was filed in the wrong jurisdiction, and when it was re-filed and on its way to reach the court again, the Bush Administration filed criminal charges, making it a moot issue – a move seen as seeking to retain the power by not letting the court strike down the executive order. In a partial victory in the Hamdi case, the court ruled, "We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens." It also noted that "[i]t is during our most challenging and uncertain moments that our nation's commitment to due process is most

severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."<sup>51</sup> Contrary to decisions in World War II, the court took a drastic step in announcing support for due process rights. The ACLU's influence over the years had clearly made an impact. On the other hand, Hamdi was never charged with a crime and was released to Saudi Arabia in a deal where he renounced his US citizenship and accepted travel restrictions in exchange for deportation.<sup>52</sup>

One of the last major issues the ACLU has dealt with, also unresolved, is the issue of torture and detainee abuse. It has filed numerous Freedom of Information Act requests, winning many, to compile information about abuse of prisoners in U.S. custody. The ACLU has also held that the prisoner abuse committed at Abu Ghraib and elsewhere violates legal obligations of the executive branch under international law. It has filed suit against the CIA on behalf of a German citizen who was allegedly apprehended in a case of mistaken identity and shipped to a foreign country where he was tortured under the "extraordinary rendition" program. Finally, it has challenged detention practices in Guantanamo Bay Cuba through *amicus* briefs and in public debate.<sup>53</sup>

One victory that has been resolved for the moment, however, involves gay rights. In *Lawrence v. Texas (2003)* – a case in which the ACLU filed an *amicus* brief – the Supreme Court struck down a Texas sodomy law in a six-to-three vote as an unconstitutional violation of due process rights and the right to privacy.<sup>54</sup> The ruling also applied to all other sodomy statutes in the United States. In the most important decision ever in the gay civil rights movement, lesbian and gays became free to be themselves without prosecution under the law. As with other rulings in the past, however, it created



somewhat of a backlash. When the Supreme Judicial Court of Massachusetts ruled prohibition of same-sex marriage to be unconstitutional shortly after the *Lawrence* case, many Americans wanted to prohibit equality, regardless of sexual orientation, in their states. According to recent reports, the Republican Party intends to introduce a constitutional amendment to ban same-sex marriage in the summer of 2006. With this case, as others, it always seems that the fight for liberty never truly remains won.



## **Chapter 2: Student Involvement in Social Movements**

While students have long been active in issues of the day, the contemporary history of progressive social movements undoubtedly began in the 1950s. Growing substantially throughout the Sixties and Seventies, it incorporated large numbers of students who led the way in the fight for social change. The civil rights, free speech, anti-Vietnam War, women's liberation, and environmentalist movements all featured varying degrees of student involvement. With civil rights, free speech, and efforts to end the Vietnam War, students were front and center in the struggles. Without their efforts, these events might not have been nearly as successful if they even transpired at all. In the women's liberation movement, students were key in forming the intellectual foundation for subsequent action by reform groups, while in the environmentalist movement, they largely participated in events created by outside parties. The 1970s largely saw a rapid decline in student activism. This reduction was primarily due to factionalism and infighting between radicals, who sought to completely reorder society, and reformers, who worked within the system to achieve change. The latter outlasted the former, but the former's effects were substantial nonetheless.

### **The Civil Rights Movement**

The contemporary history of student involvement in social movements undoubtedly begins with the civil rights movement. The civil rights movement gained a significant amount of traction in 1954 with a court decision that itself involved students.

*Brown v. Board of Education* was the culmination of a coordinated effort by the National Association for the Advancement of Colored People (NAACP), who, beginning in the 1940s and 1950s, brought a number of cases to the courts that were designed to demonstrate the ineffectiveness of the “separate but equal” standard laid out in the 1896 *Plessy v. Ferguson* ruling. Two previous cases served to facilitate this position within the courts.<sup>55</sup>

The first among these cases was decided in 1950 by *McLaurin v. Oklahoma State Regents*. The University of Oklahoma had established rules that permitted G.W. McLaurin, an African-American, to attend graduate classes at the university, which had been previously all white, but fenced him off from other students. While he was a citizen of the state who already possessed a master’s degree and was admitted as a candidate for a doctorate in education, he was assigned a specific classroom seat in a row for black students, was forced to sit at a separate lunchroom table, and was made to sit at a separate table at the university’s library.<sup>56</sup> Considering these facts, the Supreme Court in a unanimous ruling held that black students could not be subjected to segregation that interfered with classroom instruction and student interaction.<sup>57</sup>

On the same day, the court decided another important case, *Sweatt v. Painter*. Herman Marion Sweatt was denied admission to the University of Texas School of Law on account of race and was forced to attend a hastily constructed law school for African-Americans. At the time, the University of Texas School of Law had 16 full-time faculty members, 850 students, a library of 65,000 volumes, a large alumni population, and considerable prestige. The black school, on the other hand, had only five full-time faculty members, a 16,500 volume library, one alumnus, and substantially less resources



than its white counterpart. In light of such unequal conditions, the court held that Herman Sweatt had to be granted admission to the better school, contrary to the state policy of segregation.<sup>58</sup>

The NAACP's legal strategy was finally brought to fruition on May 17, 1954 in the *Brown* decision. The case involved the consolidation of five cases challenging the doctrine of "separate but equal" laid out in *Plessy*. Those cases were originally brought before the Supreme Court in 1952, and a divided court was unsure of their ability to overrule to standard. Set for reargument in 1953, Chief Justice Vinson unexpectedly passed away, allowing the new Chief Justice, Earl Warren, to pave the way for the historic ruling.<sup>59</sup> Writing the opinion of the court, he said the following:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system... We conclude that in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

The ruling had tremendous implications for both young school children and college students.

The Supreme Court's imperative that integration be instituted with "all deliberate speed" was not acted upon quickly, and by all accounts, substantial problems still faced the black community. One of them was segregation on city buses, but that would soon be addressed. The Montgomery Bus Boycott commenced in December of 1955 after Rosa Parks, an African-American woman, refused to give up her seat to a white man on a

segregated bus and was arrested. She would not face her fate alone; the Women's Political Council (WPC) had long been planning its response to the event. By the next day, the group had over 52,000 flyers printed to distribute to local blacks that asked them to boycott the city's bus system. Also coming to Rosa's aid was E.D. Nixon, a prominent labor activist. He bailed her out of jail and notified two local ministers of her arrest. Among them was Ralph Abernathy, the minister of the First Baptist Church of Montgomery, Alabama, and the relatively unknown Dr. Martin Luther King, who had just gained the ministerial post at Dexter Avenue Baptist Church. The group joined together and assembled about 50 black leaders and one white minister from the local community in the basement of King's church. After deliberations, they decided to join the WPC's efforts to boycott the city's public transit and began to plan a rally for the night of Parks's trial.<sup>60</sup>

The boycott was held on December 5, 1955, when she was due in court to face her charges. On the day of her trial, the buses were virtually empty; the event was a smashing success. Bewildered, the city police roamed the streets with shotguns searching for signs of black "goon squads" that were forcing African-Americans not to ride them, but no such squads existed. The boycott was quickly overshadowed, however, when Rosa was convicted of her charges. The development would quickly build solidarity in the black community, and by that night, 7,000 African-Americans crowded into the Holt Street Baptist Church along with black community leaders. Together they extended the boycott and formed the Montgomery Improvement Association (MIA) to organize the effort. Dr. King was selected as its president and he said something that night that would

resonate far beyond the campaign: "There comes a time when people get tired of being trampled over by the iron feet of oppression."<sup>61</sup>

Under his leadership, boycotters organized carpools, walked, traveled by horse and buggy, and rode with black taxi drivers who began to charge the same fare for participants as the city buses had charged for transportation. The city refused to budge on its policy, and it paid tremendously through lost revenue. Desegregationists also adopted the tactics of the NAACP and challenged the legality of bus segregation using *Brown* as precedent. The city fought the challenge furiously, but by November of 1956, it had lost its final appeal, as the Supreme Court upheld lower court decisions that declared the policy unconstitutional.<sup>62</sup> With the court's decision in hand and economic costs mounting, the city desegregated the buses after 381 days of boycotting. The effort had two major consequences. Not only did the action establish a desegregated bus system in Montgomery, but the Supreme Court decision forced desegregation of bus seating throughout the United States. Further, the event propelled Dr. Martin Luther King into the national spotlight, and he became a major figure in the civil rights movement.

Although students were not as prominent in the bus boycotts as they had been as litigants in the school desegregation cases, they soon became leading figures in the fight for racial justice once again. On February 5, 1960, four students from North Carolina Agricultural and Technical State University embarked on a non-violent mission that would soon sweep the nation. Taking the battle to their local community, Greensboro, North Carolina, they staged a sit-in at the Woolworth's department store lunch counter after being refused service. Although their initial activity was met with apathy, as they simply sat until the store closed, the conflict escalated as they returned for the next five



days and hundreds of protesters joined them in their effort. The tactic quickly gained national coverage, and students across the country would soon join the A&T students in sit-ins across the country. Many of these students were organized by the Congress of Racial Equality (CORE), a group that had originally been founded in 1942 by Chicagoan James Farmer.<sup>63</sup>

CORE rapidly organized white and black students around the country to stage sit-ins in publicly segregated spaces across the South. The tactic of using students was particularly effective. An unprecedented number of black students, approximately 70,000, had participated in the events by the end of 1960. Until this point, some sit-ins had been staged, but nowhere near the historical numbers of that year. The reason is that many members of the African-American community in the South were economically disadvantaged, living paycheck to paycheck, and they often feared arrests and convictions that could put their jobs in jeopardy. Students, on the other hand, generally had fewer financial obligations, including families that depended on them, and they were more supportive of direct action to speed up civil rights reforms of the time. Their tactics were rewarded; by the end of the year, the students were successful in integrating lunch counters in cities across Texas, North Carolina, and Tennessee.<sup>64</sup>

CORE was not alone in the effort, however, as a new group sprung up and aided in planning the historic number of sit-ins occurring across the nation at the time. The Student Nonviolent Coordinating Committee (SNCC) became instrumental in the civil rights activities of the day. In April of 1960 a Raleigh, North Carolina conference of student activists assembled and founded the organization, and the group dedicated itself to proliferation of sit-ins around the country. Working toward the same goal as CORE,

which was a New York based organization by that time, the group helped organize sit-ins across the country. Many civil rights leaders gave it their support, including Dr. Martin Luther King, who presumed that the organization would serve under his Southern Christian Leadership Conference (SCLC) that formed in 1957. Students had other ideas, however, as they wished to take control of their own organization and take a more active leadership role in the movement. The newly formed group of fewer than 200 students, working alongside CORE, made that goal a reality.<sup>65</sup>

It was not the first time the two groups would work on the same mission, and subsequent actions put the group in a more coordinated effort to mount a national campaign. Both groups organized the Freedom Rides of 1961; that event gained national attention as well. The first ride began with public buses on May 4, 1961, included seven blacks and six whites, and left Washington, D.C. for the Deep South.<sup>66</sup> The riders intended to challenge the enforcement of a 1960 Supreme Court ruling banning segregation in interstate bus and rail stations. Their route went from Washington D.C. to North Carolina, South Carolina, Georgia, Alabama, and Mississippi.<sup>67</sup>

The first week of the event was relatively calm, but the second week was not so fortunate. One of their buses was burned in Anniston, Alabama; and in Birmingham, several dozen whites beat black and white riders, with many of them having to be evacuated to New Orleans by the U.S. Justice Department. However, the violence did not deter CORE and SNCC from continuing their mission. They continued on to Montgomery where they were attacked by an angry mob of more than 1,000 whites while local police took little action to protect them. The violence, although terrible for those victimized by it, generated national coverage and a public outcry that forced JFK's hand

in ending the bloodshed. From there they went to Mississippi and were beaten and jailed, but they had already accomplished their mission.<sup>68</sup> It is clear that while the Freedom Riders did not complete their journey, they did achieve their goal of bringing more people into the movement.

The SNCC and CORE went on to organize voter registration drives in rural Georgia, Mississippi, and Alabama in 1961,<sup>69</sup> but the next major event in the civil rights struggle was led by Dr. King. In 1963, Birmingham, Alabama saw black men and women hold sit-ins in eateries where they were denied service and kneel-ins at the front of churches that would not admit them. In May, King joined their cause and led a march, along with Reverend Abernathy, in which police beat them and attacked them with dogs. They were arrested, and it was here that MLK penned his famous "Letter from Birmingham Jail." After being released, King led the March on Washington in August and delivered his "I Have a Dream" speech that still serves as a timeless symbol of the struggle for racial equality.<sup>70</sup>

It would take more work to make that dream a reality, and in the summer of 1964, CORE, SNCC, and the NAACP again joined to aid in the process. The groups organized thousands of volunteers to go to Mississippi and other Southern states for voter registration drives, bringing along many white, northern college students. The event was known as the Freedom Summer. The groups largely targeted Mississippi because of its poor voter registration record involving African-Americans. By 1962, only 6.7 percent of blacks were registered to vote in the state. The Freedom Summer was publicized across the country, and soon the efforts expanded beyond registration activities. The groups formed the Mississippi Freedom Democratic Party (MFDP) as a response to being



excluded from the traditional Democratic Party. Over 80,000 people joined, yet they were unable to secure a spot on Mississippi's Democratic delegation to the national convention. The effort was spotlighted in media accounts, however, and did help highlight disenfranchisement of blacks in the state.<sup>71</sup>

In addition to these efforts, the Freedom Summer project included setting up 30 "Freedom Schools" in the state to draw focus on unequal educational opportunities for blacks. They drew over 3,000 students, by all accounts an amazing feat, but not everyone was supportive of their cause. Violence broke out throughout their efforts, and by the end of the summer, 37 black churches and 30 black homes were firebombed or burned, often without successful prosecutions in the case. More than 1,000 black and white volunteers were arrested and 80 were beaten by mobs and police officers who resented their goals. The violence culminated in the murder of three volunteers, two whites and an African-American, whose badly decomposed bodies were discovered late in the summer. Their deaths were not in vain; the events bolstered Americans' support for civil rights and contributed to the passage of the Voting Rights Act the next year.<sup>72</sup>

Also contributing to the passage of the legislation were the actions that took place in Selma, Alabama in 1965. After a demonstrator was murdered in Marion, residents decided to hold a march, and Dr. King agreed to lead the event. As Governor Wallace blocked their efforts, King pled to LBJ to intervene and allow it to go on. Eager demonstrators went ahead without federal support and marched from Selma, meeting heavy resistance from state troopers at the city line. As they crossed the bridge out of the city, the police ordered the crowd to disperse and attacked them with tear gas and batons as they bowed their heads in prayer. The event became known as "Bloody Sunday" and

it prompted further marches. Three days later MLK led a demonstration in which one protester was killed, and with LBJ's permission, he led a successful march from Selma to Montgomery on March 25. SNCC and CORE also led demonstrations in the spring as well, but "Bloody Sunday" was a turning point in the struggle for racial justice, inspiring LBJ to give a speech to Congress highlighting the importance of civil rights for African-Americans. Later that year, with the president on board, the Voting Rights Act of 1965 was passed. It eliminated poll taxes and literacy tests, significantly increasing the amount of registered black voters in the South.<sup>73</sup>

A splintering of the student movements was also seen in 1965 when SNCC began to view King's SCLC as too willing to compromise with whites. By 1966 a group of black separatists took over the organization and began to purge white members from its ranks. Headed by Stokely Carmichael, then H. "Rap" Brown, the group began to cooperate with the newly emerging Black Panthers, who advocated violence as a legitimate means of self-defense and supported self-reliance. Reflecting their change in ideology, the group renamed itself the Student National Coordinating Committee in the summer of 1969, but the organization fell apart after Brown faced legal problems and was sentenced to prison in 1973.<sup>74</sup>

Regardless of the demise of SNCC, college students were at the forefront of the civil rights movement. From serving as litigants, to organizing sit-ins, marches, and voter registration drives, students participated in the events with unrivaled intensity and dedication. Scholars who were intrigued by the movement and sought to gain a greater understanding of its membership also noticed their efforts. In 1962, inspired by local events, Ruth Searles and J. Allen Williams, Junior, both UNC Chapel Hill professors,

penned an article entitled “Negro College Students’ Participation in Sit-Ins.” Interested in the motivations behind the struggle, they sampled three black schools in Greensboro and Raleigh, theorizing that participation had less to do with alienation and disaffection than identification with or positive reference to the white middle class. Searles and Williams found that the most active members of the movement were generally from higher social status backgrounds than those with lower participation, they were more optimistic about support from the black and white community, and were less likely to attribute opposition to hatred of blacks by whites. Speculating about parental socialization from middle class families, they suggested that the data supported the notion that blacks wanted equal opportunity with middle class whites.<sup>75</sup>

At least one other scholarly article appeared that focused on African-Americans in the period. John M. Orbell wrote a piece called “Protest Participation among Southern Negro College Students” in 1967. Drawing a sample of 264 students from a 1962 work on Southern attitudes and behavior, Orbell discovered that protest participation increased as the quality of the college increased, with state-run schools occupying the lower tier and private schools occupying the higher tiers. At the time, private institutions had less pressure from the public because they did not rely on their funds for support, and they had better funding overall. He also found no support for frustration and aggression toward whites as motivating factors for participation, nor did he find support for the notion that protest increased as the proportion of blacks living in the area increased. Orbell did find that participants were much more likely to come from better economic conditions than non-participants, echoing the results of Searles and Williams. The totality of his findings led him to believe that these students had a higher awareness of the



world around them, resulting in an increased likelihood for development of attitudes and perceptions that led to their protesting. Further, Orbell believed resistance from whites pressured state college administrators, potentially shaping the types of protest that arose on public campuses.<sup>76</sup>

### **The Free Speech Movement**

While the civil rights movement was raging throughout the South, another student movement sprang up on the University of California at Berkeley campus. In September of 1964, the University of California issued a policy that banned student groups from collecting funds for off-campus causes on a highly traversed strip of the university's property.<sup>77</sup> Immediately, 20 organizations, including Campus CORE, University Friends of SNCC, Students for a Democratic Society, University Young Republicans, University Young Democrats, and many others, announced a coalition called United Front to oppose the policy.<sup>78</sup> Although opposition groups came from across the political spectrum, many student activists, particularly leftists, suspected that the ban was put in place to appease conservatives who disliked their activist causes.<sup>79</sup>

In response to student opposition, Chancellor Strong interpreted the rule as allowing distribution of campaign literature and materials at designated locations, while Dean Williams announced that "illegal politics" could result in expulsion from the university. Defying the ban, several United Front organizations set up tables to organize political and social action, resulting in the expulsion of five students who manned them and three suspected leaders of the group. In a same-day gesture of solidarity, 400 students signed a pledge declaring that they too had manned tables in violation of the policy. They then

proceeded to enter Sproul Hall, the site of the university judicial actions, demanding disciplinary hearings for themselves and sat-in until 3 AM.<sup>80</sup>

The controversy became increasingly heated on October 1st, when students rallied and set up tables outside Sproul Hall. At the event, campus police arrested Jack Weinberg, a graduate student working a table for CORE. Three thousand student protesters blocked the police car from carrying Weinberg away, and some of them stormed the building and clashed with police that sought to close it. The next day, 450 police arrived to try and remove the car and Weinberg again. Their efforts were fruitless. After their failings the administration agreed to meet with students to discuss their differences. Police and students dispersed, and the university agreed not to press charges against Weinberg. Over the next couple of days, the United Front adopted the name of the Free Speech Movement (FSM).<sup>81</sup>

The administration responded to student concerns by appointing some students to an ad-hoc committee on the issue, but by the beginning of November, the FSM grew tired of delays and began picketing Sproul Hall once again. Ending a self-imposed six-week moratorium, the group resumed tabling on November 9th, and 1200 students joined the rally. By the end of the month, 60 letters of reprimand were sent to students who manned tables on that day, including many of the movement's leaders. Chief among them was Mario Savio, who had worked on behalf of the civil rights movement, which, in his view, was similar in its goal of obtaining freedom. On December 1st, the movement, incensed by the reprimands, demanded that the university drop the charges or face a massive protest within 24 hours. The administration did not heed their advice.<sup>82</sup>

The rally attracted 6,000 people, 800 of which sat-in Sproul Hall overnight. Speaking to the massive crowd, Savio said that “you’ve got to indicate to the people who run [the university], to the people who own it, that unless you’re free, the machines will be prevented from working at all.”<sup>83</sup> Police came in and arrested people who would not disperse from the sit-in, but some faculty members were able to raise \$8,500 in bail money for the students to show their support.<sup>84</sup> All was not optimistic, as the crackdown by police led to a university-wide protest strike by students and some of the faculty, resulting in a virtual cessation of classes at the university. Facing a dangerous situation, the university finally agreed that there would be total freedom of political activity on the entire campus, and the Academic Senate made the motion official on December 8, 1964.<sup>85</sup>

While the events pale in comparison to the civil rights struggle, students did set a precedent that other schools were undoubtedly mindful of in relation to free expression on campus. With increased freedom of student expression on college campuses, the limits of what students could accomplish were seemingly nonexistent. Future civil rights actions could take place with greater ease, although they had become concentrated largely outside the campus environment. Protesting the Vietnam War, on the other hand, was an issue that was soon to become a major one across the country on college campuses. Student victories for free speech at Berkeley undoubtedly paved the way for more intensive activity to occur in fighting the war.



## **Students and the War in Vietnam**

Student protest perhaps reached its zenith with the Vietnam War, but it began humbly. The early activity occurred in 1964, when Haverford College students, a small group of Yale students, Berkeley students, and students at the University of Pennsylvania began to voice discontent with LBJ's Vietnam policy. In that year, Haverford College students collected supplies for the Vietcong, and the Yale students organized "the May Second Movement" to protest the policy. In August, a group of faculty and graduate students published a newspaper advertisement taking issue with the Tonkin Gulf resolution. Shortly thereafter, 70 faculty and 200 students published a letter urging negotiations instead of increased military escalation as a means of settling the conflict. Aside from these isolated events, little student activity focused on Vietnam during the year.<sup>86</sup>

February 7, 1965 saw a dramatic escalation in the war, with Johnson ordering the bombing of military targets in North Vietnam and a dramatic increase in the number of ground forces in Southeast Asia. He also noted that the draft would be used to provide extra troops if necessary. Students responded viscerally, holding spontaneous demonstrations the day after the announcement at various campuses across the country. Students for a Democratic Society (SDS), which would later become much more involved in radical direct-action anti-war efforts, called for a march on Washington in April. The group was an offshoot of the Student League for Industrial Democracy that had evolved from a pre-World War I Intercollegiate Socialist League.

Seizing on direct-action tactics themselves, New York City undergraduates blockaded the entrance to the United States Mission to the United Nations, resulting in arrests, while Oberlin students fasted for two days to highlight their opposition to the war's escalation.

College faculty joined in the chorus of discontent as well and established a University Committee on War and Peace, with meetings to be held at more than forty colleges across the country. It was these academics that created the generation's first new tool in anti-war activity – the teach-in.<sup>87</sup>

The teach-in originated at the University of Michigan after students were arrested at a sit-in of the local draft board. Anti-war faculty threatened to strike in response to the event but cowed at threats from administrators that signaled intolerance for class interruptions. Changing their strategy, the anti-war professors decided to hold teach-ins at four university auditoriums, and on March 24-25 of 1965, more than 300 faculty and 2,000 students attended the events. The teach-ins received considerable media coverage at the national level and spread across college campuses nationwide. With the aid of the anti-war Michigan faculty, the tactic grew from the campus to national level. On May 15th, a national teach-in was hosted in Washington, D.C. and 5,000 people came to hear debate about the war. Three and a half hours of the more than 15-hour event were televised and broadcasted to over 100,000 students at 110 colleges in 35 states. President Johnson was not persuaded by the tactic. He announced a massive buildup of troops to protect the South Vietnamese government and a doubling of monthly draft quotas. For many activists opposed to the war, the time for talk was over; increased militancy was the only response that could have any effect on policy.<sup>88</sup>

Hard-line radicals, including some at UC Berkeley, increasingly headed campus groups dedicated to bringing the conflict to an end. The Vietnam Day Committee (VDC), founded in response to the Vietnam crisis, was one of the more militant groups at the university. They advocated complete opposition to the war, including violence if

necessary. Students also took to the streets, holding rallies in Washington that boasted crowds of 50,000 and 25,000, respectively, in October and November of 1965. Similar protests were held in other countries as well, while other efforts involved more dramatic direct action. Militancy was stronger on the West Coast, and the VDC was ready to take up the cause. The group unsuccessfully attempted to block trains that were shipping troops to the Oakland Terminal for deployment. They handed out anti-war leaflets to soldiers on board, and they even marched by the thousands to try and shut down the Oakland base. The VDC met a rude awakening, however, when they were met and turned back by Hell's Angels and 450 police officers armed with helmets.<sup>89</sup>

Sensing rising opposition among college campuses, the Johnson Administration was convinced by moderates within the government to send out State Department "Truth Teams" to college campuses to bolster support for the war. They were not greeted kindly. After being booed off the stage and disrupted at numerous colleges, the Senate Subcommittee on Internal Security opined that campus dissidence was a plot of Communist professors to brainwash students into anti-Americanism. They demanded a government investigation to find the traitors and J. Edgar Hoover happily granted their request. Hoover claimed that Communists were at the heart of the teach-ins, and the House Committee on Un-American Activities demanded that colleges be subpoenaed to provide complete membership lists of campus groups opposed to U.S. policy in Vietnam. Many colleges turned over the information with little fight, despite faculty protests and a letter from the American Civil Liberties Union urging the contrary.<sup>90</sup>

The administration also used other tactics to intimidate activists. In late 1965, Michigan's director of Selective Service ordered a review of 26 students who engaged in



a sit-in at the Ann Arbor office. Two years later, the head of the national Selective Service system, General Lewis B. Hershey, sent a letter to every draft board in the country instructing them to reclassify Vietnam protesters as I-A so they would be drafted. The Justice Department had already issued an advisory opinion declaring such action unlawful, yet it is unclear how extensively it was followed. Regardless, the practice did not quell the movement. Finally, the Johnson Administration paid professors to publicly express views favorable to the war, and used the CIA to finance student groups across the country that did the same. Yet again, the policy failed to produce its intended result.<sup>91</sup>

By March 24, 1966, the Selective Service announced that only full-time college men in the top half of their class as freshmen, or even higher as upper classmen, would be eligible for deferment from the draft. Students could avoid the new system by scoring highly on a government-sponsored College Qualification tests, yet this provided little solace to youth. The American Association of Junior Colleges denounced the policy as racially discriminatory, while students at highly competitive universities decried their vulnerability in light of the quality of students at their institutions. Professors also began to worry, because if they gave a student bad grades, it might provide them with a one-way ticket to Vietnam. Given the situation, student protest escalated, and the new targets were administrators who were willing to turn over information about class rank to the Selective Service.<sup>92</sup>

At Columbia University, students led by the campus SDS chapter voted 1,333 to 563 against releasing the data. After faculty support and threatened strikes, the University Council voted to withhold the information. Nationally, most students opposed to the draft tried to evade it by any loophole possible, be it marriage, children, or joining the

National Guard. Draft resisters, on the other hand, were willing to openly break laws and risk imprisonment due to their actions. Some students burned their draft cards, while others openly denounced the war at commencement ceremonies. The SDS aided evaders by setting up tables outside of centers where draftees took their physicals. They distributed manuals that advised students how to fail the tests in a project that was known as the "May 2<sup>nd</sup> Movement." Nevertheless, the draftees who largely fought and died in the war were lower class citizens, high school dropouts, and members of minority groups, while college students often found ways out of serving.<sup>93</sup>

That notwithstanding, with the increased escalation of the war and the rising threat level for college students, the movement had predictably become more radical. By the end of 1967, the student anti-war movement became more fractured, incorporating sizeable peaceful and direct-action oriented wings. The peaceful protesters drew large numbers of dissenters to their events, including hundreds of thousands in April of that year and over 200,000 students a year later. By mid-October of 1969, the group was able to enlarge its numbers to 2,000,000 people across the country in a single event, including 50 U.S. Congressmen. Those dedicated to more obstructive means sought additional outlets for their opposition. As with earlier direct-action, the SDS was at the forefront of such activity. In October of 1967, 31 Princeton demonstrators were arrested as they tried to block the entrance to a building where the Institute of Defense Analysis (IDA), a research center based at 12 elite universities that dedicated itself to secret military work, was located. At the University of Chicago, student protests drove the IDA off campus. The University of Pennsylvania also ended IDA research after student and faculty pressure organized by activists.<sup>94</sup>

In April and May of 1968, SDS organized the most visible and controversial attack on the military establishment to date. Their Columbia University chapter advocated completely destroying the school to inhibit its ability to aid in the war effort. They issued two non-negotiable demands to the administration: immediately sever all ties with the IDA, and end construction of a new gym in Morningside Park, a spot in Harlem that black militants wanted solely reserved to meeting the needs of the black community. Shortly thereafter, SDS occupied four of the school's buildings, and black activists took over another building as well. Most of the faculty opposed the action and tried to resolve it peacefully, but following unsuccessful negotiations, school administrators called in the police. The officers used a great deal of force in arresting 700 people, however, and it created sympathy among the student body. Nonetheless, the school suspended the SDS chapter president and 72 other students for the event, and the school president and his chief assistant resigned amid the embarrassment. Despite their militant actions, however, SDS claimed to have 75,000 national members by November of 1968 and hundreds of college chapters across the country; Columbia was not alone in its militancy.<sup>95</sup>

In December, students from the NYU chapter rushed the school's Loeb Center, where an ambassador from South Vietnam was speaking, and proceeded to dismantle the loudspeaker system, drape a Nazi flag around his neck, and douse him with a pitcher of water. Employees had to rush him out of the building to protect his safety. Opposition to the war spread to other colleges as well, as MIT and Penn State students staged unsuccessful campaigns to shut down classified military research in 1969. SDA started to take the fight to other targets of the military establishment too. They began campaigns to prohibit representatives from the CIA, Department of Defense, and the Dow Chemical



Company, which manufactured napalm, from recruiting on college campuses. By 1969 there had been over 200 protests against Dow Chemical alone. SDS widened the nets and targeted ROTC as well, but many of their attempts at barring recruiters were unsuccessful. One of the notable exceptions occurred at Harvard in 1969 where ROTC was abolished, but at other campuses, administrators failed to make any concessions at all, or when they did, they usually took the modest step of removing class credit for ROTC classes.<sup>96</sup>

Many of these protests turned violent, featuring student occupation of university buildings and clashes with police. At Harvard alone, 196 people were arrested and 46 were taken to the hospital. Berkeley students followed suit and battled police forces for control of a "People's Park" they had established in a conflict so massive that it resulted in a "State of Civic Disaster" being declared by the government and thousands of armed National Guardsmen being called up for patrol duty. Undeterred by government actions, the group proceeded to establish the "Berkeley Liberation Program," which declared all out war against the University of California for being "a major brain center for world domination." They even tried to convert the south campus area to a "strategic free territory for revolution" and, on Memorial Day, 30,000 students marched to support their efforts.<sup>97</sup>

The violence did not die down in 1970; if anything, it escalated tremendously all across the country. UC Santa Barbara students took to the streets and seized a three-block area around campus, burning a Bank of America building to the ground. Stanford students committed arson to fight the war, while Cornell students took up arms and threatened shoot-outs with the police. In late August, in what was soon to be known as

one of the most infamous actions against the war, a University of Wisconsin employee was killed when a massive bomb exploded, wreaking \$8,000,000 worth of damage to the campus. President Nixon's announcement in late April that he would send troops to Cambodia, who he viewed as sheltering the Viet Cong, added more fuel to an already fiery conflict. Students at Kent State burned their ROTC building to the ground on May 2nd, just three days after the announcement. As the rioting grew, administrators pled to the governor to intervene, and he dispatched units of the Ohio National Guard "to restore law and order." What transpired would go down in history forever.<sup>98</sup>

A curfew was imposed on the entire town of Kent, but students ignored it and continued rioting. On May 4, 1970, they met at the University Commons to continue their protest. National Guardsman shot tear gas at the demonstrators, prompting some to throw rocks, pieces of concrete, and smoking canisters back at the troops. One platoon turned away, starting walking, then turned back around and opened fire on the students. Four students lay dead and eight others were wounded by the shots. A state official quickly issued a statement defending the National Guard, saying they opened fire because a sniper was shooting at them, but subsequent investigations uncovered absolutely no evidence that anyone was shooting except for National Guardsmen themselves.<sup>99</sup>

Kent State was not alone in killings of demonstrators at the hands of government officials. Eleven days later at Jackson State College, a Mississippi school, the unfortunate series of events repeated themselves yet again. As a group of black students assembled to protest various aspects of the Vietnam War, among other things, a squad of white city police and state highway patrolmen met them. Seeking to squelch what had become a riot, they too opened fire. This time around two students died and fourteen

others were wounded. As the word spread of these incidents, students responded with outrage. In California, reactions were so bad that the governor ordered all state universities closed. All in all, it was a tumultuous time. During the academic year of 1969-1970, 9,400 violent incidents occurred at colleges in the United States, with police intervention in 730 of them. One hundred and thirty institutions ended up canceling spring classes in response to the uprisings.<sup>100</sup>

The next academic year, perhaps surprisingly, saw a tremendous decline in the student protest movement. Although some of this decline might be attributed to fear of government violence, other sources may have existed as well. For one thing, colleges themselves are very transitory environments, and it is possible that as old students left, new students brought different views with them. Further, while many students actually opposed the Vietnam War, a lot of them were probably afraid of becoming linked with militant action and violence that was associated with the more visible, radical groups. Radical tactics received the most media coverage, and its tone was often very critical. Finally, as groups became more militant, they also became more exclusionary and fractured. The black power movement's leaders were often hesitant to work with white liberals, who they considered racist for lacking substantial black leadership and not spotlighting the ethnic discrimination associated with the war more prominently. Feminist movements also sprang up that considered the largely white groups sexist for lacking adequate female leadership in their organizations as well. As the groups became more hostile toward the government, they also became more hostile toward each other, and their movement collapsed.<sup>101</sup>



The government also employed tactics to pursue that end, aside from draft strategies, pro-war government paid professors, CIA sponsored student groups, and direct force. Chief among its efforts was a program called COINTELPRO. Although it is unclear how successful the program was in breaking up the anti-war movement, a number of revelations about it emerged in the early 1970s. During this time, Idaho Senator Frank Church led a panel that investigated the role of the FBI and other government institutions in political repression. COINTELPRO, or counter intelligence program, was heavily discussed in their proceedings and final report. Among other things, they found that the program had been active and run by the FBI from 1956-1971, and it was designed to monitor and neutralize domestic groups deemed by the FBI as a threat to national security. Included were civil rights groups, Dr. Martin Luther King, and anti-war groups as well. The NAACP was investigated for 25 years, and the FBI even admitted to burglarizing political groups' headquarters to get information about their activities. The Commission stated, "[O]ur investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom and have extended to a wide array of citizens engaging in lawful activity." In response to the findings, the Attorney General, Edward Levi, drew up a set of guidelines for future domestic surveillance that included the presence of "specific, articulable facts" indicating criminal activity. These standards would stay in place until Attorney General John Ashcroft revised them in the wake of September 11, 2001, allowing investigators to attend any event open to the public.<sup>102</sup>

The government was not the only group that took interest in the protest movements of the Sixties. During the movements' growth, decline, and subsequent demise, academic

researchers have been there every step of the way, trying to gain more comprehensive knowledge about them. The first few studies had serious methodological concerns, often incorporating qualitative analysis or flawed research designs. The academic community was split over the legitimacy of the movements, and many of their articles ended up reflecting levels of personal affinity toward the groups rather than substantive data. Nonetheless, a substantial body of literature has been generated that sheds light on who exactly participated in the protests and predictive variables in determining involvement.

It is clear from Sherkat and Blocker's work (1994) that men were more likely to participate than women, although lower rates of college attendance for women, lower political efficacy – belief in one's ability to enact political change, and increased proclivity toward literalist, fundamentalist Christianity, which had a depressive effect on participation, seemed to largely explain this finding. Catholics and Jews were also disproportionately represented among activists as compared to fundamentalist Protestants. This trend was probably the case due to social justice being more highly stressed in Catholicism and Judaism, and obedience to authority being focused on in literalist Biblical teachings. African-Americans were also more likely to engage in activism for the student and civil rights movements as well, although not the antiwar protests, as could be expected given their stake in the civil rights movement.<sup>103</sup> Finally, Kahn and Powers (1970) point out that protesters were more likely to major in humanities or social sciences at higher quality institutions than non-activists at the schools.<sup>104</sup>

Key to determining who participated was a host of factors related to political socialization. Flacks (1970) suggests that the founders of the student movements were disproportionately children of highly educated parents who had sectarian intellectual

interests but strong values. In short, they were products of a humanist subculture of the middle class that rejected many of society's conventions opposed to their upbringing.<sup>105</sup> Sherkat and Blocker's work (1994) also highlights the role of the family in cultivating future activists. In addition to the importance of religious beliefs, they also note that increased parental political participation correlated positively with student involvement in political protests. Further, they noted that political efficacy, or belief in one's ability to enact political change, was higher among activists than non-activists. This too is largely a product of political socialization.

Location also had a great deal to do with participation in activism. Kahn and Powers (1970) note that more highly competitive and selective schools tended to have higher rates of activism than lower quality schools, suggesting a nurturing institutional environment for protests at better universities. Van Dyke's work (1998) seems to confirm the existence of a more positive institutional climate among selective schools, which did indeed feature higher rates of activism. She also found that schools with histories of student activism were more likely to engage in student activism in the Sixties than those without previous experience. Further, those schools also tended to include more than one type of activist movement at a time, suggesting an interaction of activist subcultures within the schools.<sup>106</sup>

In short, the research seems to indicate, at least for the period, that activists are disproportionately more likely to be male, they differ religiously from Protestant fundamentalists, they proportionally included more African-Americans than other ethnicities, and they often became social science or humanities majors at the better schools. Activists are also created in part due to parental socialization from well-



educated humanist sectarians with strong values, who are more politically active than non-activists' parents, and who raise children with higher levels of political efficacy. Finally, students who attend selective and competitive institutions with a history of protest are more likely to engage in such activity themselves.

### **The Women's Movement**

Although the women's suffrage movement was the first major successful campaign for women's rights in the United States, culminating in the ratification of the Nineteenth Amendment in 1920, activism subsided in subsequent decades. The emergence of the civil rights and anti-war movements in the 1950s, 1960s, and early 1970s provided activist opportunities for women that were previously not mobilized because of this decline. Those experiences would provide women with tactical knowledge and fervor for what would become the women's liberation movement of the 1960s and 1970s. Ushering in a second wave of feminism, activists across the country would gain recognition and enact meaningful change that would improve women's lives.

The women's liberation movement was substantially fractured in terms of groups and tactics, with generational conflicts creating disunity among its participants. The radical or revolutionary wing of the movement was comprised of younger women who sought to change existing structures of power in the country, and they often used more drastic tactics in their efforts to do so. Incorporating a wide diversity of viewpoints, this branch included such groups as The Feminists, Redstockings, New York Radical Women, and the Chicago Women's Liberation Movement. Generally, older feminists were most associated with the reformist branch. Including groups such as the National Organization

for Women (NOW) and the Women's Equity Action League (WEAL), these organizations dedicated themselves to working for reform within the established legal and political systems of the United States.<sup>107</sup>

The heart of their conflict rested in tactical measures and issues of ideological purity. Radicals were especially incensed with the reformers' efforts to work within a system that they decried as inherently oppressive and patriarchal. They also were dismissive of older women who permeated the organizations because they were largely white, middle-class, and seen as out of touch with the issues facing females of the day. On the other hand, reformists believed that in many cases the radicals were the ones who were naïve and out of touch; after all, they had little real world experience. Despite the conflict between the two groups, however, both contributed significantly to the advancement of women's rights in the period.

As with the reformist element, radicals had roots in the civil rights and anti-war movements of the day. Even though these individuals shared that common ground, they differed tremendously in other areas. The groups subdivided into Marxist and socialist feminists, small consciousness-raising groups, and cultural feminists. The Marxist and socialist element, seeing capitalism as the primary oppressor of women, was interested in radical political and social change. The consciousness-raising groups sought fundamental changes in relations between men and women, while cultural feminists targeted linguistic, artistic, sexual, and symbolic representations of women as key to their oppression.<sup>108</sup>

The origin of many of these groups, particularly those with heavy student influence, can be traced back to problems arising in SDA and the SNCC. Often relegated to

performing mundane clerical tasks, some women became disappointed with their lack of leadership roles and sexual objectification by males within the groups. Their attempts to seek changes in these problems were also frequently dismissed as insignificant by their male counterparts. Although Students for a Democratic Society's National Council included a workshop on "Women in the Movement" as early as 1965, serious attempts to address sexism within the movement and society at large were met with serious resistance.<sup>109</sup>

When females sought to include a discussion of women's issues at the national conference that year, the initiators were greeted with jeers like "she just needs a good screw."<sup>110</sup> They responded by organizing a walk out, but their action yielded little results. In June of 1966 a "Women's Liberation Workshop" at the national convention articulated an analysis of women's subjugation in society,<sup>111</sup> but when its authors requested the addition of a "women's liberation plank" in SDA's platform, they were pelted with tomatoes and thrown out of the convention.<sup>112</sup> SNCC displayed similar problems at their retreat in November of that year. Among many papers presented at the event was an anonymous critique of the position of women in society and the movement, penned primarily by Mary King with Casey Hayden providing some assistance. Stokely Carmichael, the SNCC's national chairmen, ridiculed the notion commenting that the position of women within the organization was "prone." They revised it a year later, claiming authorship, and distributed it to 40 female activists across the nation.<sup>113</sup>

Undeterred by their opponents, feminist women prepared for the '67 National Conference for a New Politics. At it they attempted to introduce resolutions, but again they were roundly defeated. The authors of the resolutions, Jo Freeman and Shulamith



Firestone, were incensed by the obstructionism and responded by forming the first autonomous women's liberation group in Chicago the next week, Women's Radical Action Project (WRAP).<sup>114</sup> Firestone also went on to form New York Radical Women (NYRW) with another feminist, Pam Allen, that same year.<sup>115</sup> NYRW became key in developing some of the most publicized figures and activities of the radical wing of the movement. In September 1968, NYRW member Robin Morgan helped organize one of the most famous direct actions of the period. Brandishing signs such as "Cattle Parades Are Degrading to Human Beings,"<sup>116</sup> she and other activists protested the Miss America Beauty Pageant to raise awareness about the objectification of women. Several months later she went on to found Women's International Terrorist Conspiracy from Hell (WITCH), and they were even more radical, "hexing" Wall Street in defiance of its patriarchal, oppressive character.<sup>117</sup>

The Feminists, Redstockings, and CWLU formed in 1969, after the breakup of the NYRW.<sup>118</sup> Substantially more radical than their predecessors, The Feminists embraced separatism, restricting the amount of members who practiced heterosexuality and calling for women to prove their feminist loyalty by embracing lesbianism. They gained recognition by picketing public agencies where couples were applying for marriage licenses, chastising marriage as an inherently enslaving institution.<sup>119</sup> The Redstockings devoted a significant amount of time in "consciousness-raising," organizing women into small groups to discuss their personal experiences and oppression, and they also engaged in militant protest actions as well.<sup>120</sup> CWLU focused on linking oppression to capitalism, becoming the first autonomous socialist group. These and other new factions differed

mightily in their views and they criticized each other tremendously, much to their detriment; by the early 70s, most radical groups had folded or were in serious disarray.<sup>121</sup>

Before that happened, however, a proliferation of feminist literature emerged, and a substantial market developed that ensured its longevity. The number of feminist periodicals doubled nationally from 30 to 60 between 1970 and 1971. Numerous books were published as well, including Shulamith Firestone's *Dialectic of Sex* in 1970, and doctoral candidate Kate Millet's *Sexual Politics* that same year. Firestone called for an end to the "tyranny of the biological family," while Millet denounced the patriarchy, including its social and linguistic elements. Male critics especially attacked Millet, but her book sold 80,000 copies in its first year nonetheless.<sup>122</sup> Afterwards, *Ms. Magazine* was formed with a million dollar investment from Warner Communications in 1972 because they realized the value of the market.<sup>123</sup>

The radical groups began to fall apart by the early 70s, and there were a number of reasons why. Infighting between radical groups caused many women to become demoralized and quit. The groups' leadership structures were also to blame. Formed on the New Left notions of equality and participatory democracy, they often lacked hierarchical leadership structures and coordination between their groups.<sup>124</sup> Further, in the absence of chosen leadership, the media chose figures to spotlight and frequently picked the most radical, resulting in negative press coverage.<sup>125</sup> Other factors include the failure of most small consciousness raising groups to branch out beyond talks and FBI infiltration and obstruction in the groups.<sup>126</sup> Regardless of their destruction, they still managed to create ideas that were adopted later by reform groups.

Chief among these groups was the National Organization for Women (NOW), which was founded in 1966 largely by educated white women who had faced the travails of sexual discrimination firsthand. It immediately set out to make a difference for women's rights.<sup>127</sup> A few of its members, however, were initially hesitant to sponsor some of the goals of the organization, and a group splintered off and formed the Women's Equity Action League (WEAL) shortly thereafter. Nonetheless, these groups would accomplish historic feats together. They would also maintain viability long beyond their radical counterparts.

NOW's first major victory came in 1969, when the Equal Employment Opportunity Commission (EEOC) ruled that federal antidiscrimination laws protecting women took precedence over state protective labor legislation. The action arose out of a case entitled *Weeks v. Southern Bell Telephone and Telegraph Company* (1969). NOW successfully argued women should be able to decide whether or not they wanted to work at jobs with specific height, weight, lifting, and work-hour requirements. Eliminating the bona fide occupational requirement, women began to have more equal employment opportunities around the country. The second major initiative from NOW involved establishing a national child-care system. Students at colleges and universities around the country were able to secure them at their schools, but NOW sought federal subsidies for a national network. Women were increasingly entering the workforce, and childcare was essential for their needs. They scored a major victory when they were able to attach a provision to an Office of Economic Opportunity Bill, approved by Congress, which would facilitate this goal. Unfortunately for them President Nixon vetoed the legislation.<sup>128</sup>



Other advances occurred as well, and many of these had radical roots. Reproductive freedom was one such area of focus. Radical Boston feminists published what would be renamed as *Our Bodies, Ourselves* in 1970, and it sold over 2 million copies by the end of the decade. Los Angeles feminists created abortion referral services for women that could not afford safe and legal abortions. By the middle of the decade, forty such facilities existed across the United States, and the National Women's Health Network was formed. The groups organized speak outs, conferences, and other events to lobby the public in support of reproductive freedom. They began to push for more information from doctors about changes taking place in their bodies during pregnancy, birth control, natural childbirth, and abortion. Their efforts had an effect, with public opinion polls beginning to favor abortion rights as a personal matter and culminated with the *Roe v. Wade* decision in 1973, which protected pre-viability abortions as a constitutional right.<sup>129</sup>

Radical women also led the way with anti-violence campaigns, which would later be adopted by reform groups. New York Radical Feminists held the first speak out on rape in 1971 and developed academically oriented educational information about the problem as well. Also that year, *Ramparts* published "Rape: The All-American Crime," which put the issue in the national dialogue. In 1975, Susan Brownmiller would publish the first history of rape in *Against Our Will: Men, Women, and Rape*. Two years earlier, NOW, responding to the increased visibility of the issue, established a task force on rape to lobby for alterations in federal rules of evidence concerning character assassination of alleged victims. They also began to work on getting state legislatures to drop marital exemptions from their rape statutes. By 1991, only four states still had the exemption,

while five others did not include cohabitation. Although this fact is disturbing, it was a significant improvement over earlier laws. Finally, radical feminists raised the issue of domestic violence, contributing to the establishment of a NOW task force in 1975. The groups were successful in helping facilitate the spread of shelters for battered women and in easing requirements for filing restraining orders.<sup>130</sup>

NOW and WEAL joined together and created major educational gains for women as well. The Equal Pay Act of 1963 provided exemptions in administrative, professional, and executive fields that considerably impacted higher education. In 1970, female college and university professors earned 55 percent less than males. As late as 1978, women constituted over 50 percent of college instructors but occupied less than 10 percent of full professorships. This problem also persisted in college admissions, with quotas often limiting the amount of spots open to women, and in athletics, where women's sports received less than 2 percent of the funding of male programs. Realizing these problems, NOW and WEAL fought successfully to combat them. Using the courts, the groups litigated against schools for violating a little-known executive order, Executive Order 11375, which prohibited sex discrimination even at higher education facilities. The groups, along with others, used this tactic to sue more than 300 colleges and universities across the country. Partially as a result of these efforts, in addition to lobbying, they were able to get legislation approved in 1972 that amended Title VII of the 1964 Civil Rights Act to include educational institutions and allow for the EEOC to sue employers for noncompliance. Later that year they were able to include Title IX in the Higher Education Act, which banned sex discrimination in all schools receiving federal monies, ending the Equal Pay Act loophole. Finally, they were able to procure support

for the Women's Educational Equity Act Program, which helped establish women's studies programs across the nation.<sup>131</sup>

Yet the centerpiece of the women's liberation movement, the Equal Rights Amendment, was a failure. After getting the measure passed through Congress and sent to the states, a conservative backlash prevented ratification.<sup>132</sup> This backlash would later serve to undermine many of the gains achieved during the period, but has been unsuccessful in completely reversing them. The gains of the movement have substantially improved the plight of women in society in the long term. From improving job opportunities, access to safe abortions, access to birth control, improvements in services and laws protecting rape and domestic assault victims, and access to higher education, the movement has substantially transformed society. Although college students did not play as large of a role in this movement as the civil rights, free speech, and anti-Vietnam War efforts, their contributions were vital to its success. They proliferated a vast body of literature that impacted the national dialogue and served as the foundation for future actions by reform groups. Many college activists also grew out of other student movements and applied their skills toward the advance of women's rights long after graduation.

### **The Environmentalist Movement**

Much like the women's liberation movement, the environmentalist movement saw college students participate in an ancillary role. Unlike it, however, they did not create a substantial part of its intellectual foundation. The underpinnings of the modern environmentalist movement can be traced to 1962, when Rachel Carson released *Silent*



*Spring*. The title refers to the death of robins from DDT toxicity.<sup>133</sup> In it, she argued a number of important points. First, she noted that science and specialized knowledge had been separated from the public and normal democratic procedures. Next, she contested that, as a result, science could be influenced by financial contributions and corrupted. Third, she asserted that the growth of pesticides typified an era dominated by industry with little regard for the natural environment. Finally, she described how industry could itself destroy human and animal habitats.<sup>134</sup>

The book was a best seller, despite attempts from industry and reactionaries to label her as misguided and a sympathizer with communism, but it was not alone in a cacophony of literature that began to emerge in the period. Among other voices were Murray Bookchin, Paul Goodman, and Herbert Marcuse, the middle of which had ties to a New Left that was a product of earlier student movements. Bookchin highlighted problems associated with urban expansion, new methods of food production, and disposal of toxic waste. In his 1962 work, *Our Synthetic Environment*, he sought to connect post-war health problems with human generated technologies and encouraged alternative energy sources to mitigate their impact. Goodman largely echoed his concerns, albeit with a substantial student audience, by arguing that cities had become dirty, faceless, and were destroying organic relations of production and consumption. Marcuse, on the other hand, drew on Marxist critiques in his 1964 work entitled *One-Dimensional Man*. Describing the post-war order as a condition of post-scarcity, he argued that consumer culture was destroying humanity by enslaving it in a system of manufactured needs that separated man from his natural environment and family.<sup>135</sup>

John F. Kennedy came to office in 1960, and he responded quickly to the increasing national dialogue on environmental issues. In 1962, he hosted a White House Conference on Conservation. The event was heavily attended and ended up generating support for a number of political initiatives. A year later, Congress passed the Clean Air Act, which allocated federal funds for efforts to combat air pollution. After Kennedy's assassination, Lyndon B. Johnson picked up where he left off. In 1964, LBJ oversaw the passage of the Wilderness Act. It designated sections of forests as protected wilderness area. A year later, Congress set up the Land and Water Conservation Fund, which eventually bought land for national and state parks. Johnson also held the White House Conference on Natural Beauty that year and helped stimulate local, state, and federal conservation policies from his efforts. Although the Democratic presidents initiated this activity, there is little doubt that outside individuals and organizations aided in speeding up the process.<sup>136</sup>

In addition to the Carson, Bookchin, Goodman, and Marcuse publications, other media and voices began to address the issue as well. Magazines, technical journals, newsletters, and differing books emerged that addressed the topic. Much of the alternative press, popularized by the New Left, began to highlight the issue as well. Books from respected experts, such as *Technics and Civilization* (1962) and *So Human an Animal* (1968), argued that humanity was permanently damaging the environment. The National Advertising Council even ran its first advertisement to combat litter, while the Sierra Club became more active, as did its splinter group Friends of the Earth (FOE).<sup>137</sup> All of these developments contributed to the movement, but national events did as well.

The 1965 power blackout and garbage strikes of New York City were widely covered and helped demonstrate the weaknesses of consumer society. Perhaps the most shocking incident, though, was the 1969 burning of the Cuyahoga River in Cleveland. People were understandably flabbergasted by what was an apparent impossibility, a burning river. Although the authorities put out the flames, they remained in the minds of many Americans and served to highlight the need for improving waste disposal in the country. Next, the 1969 Santa Barbara oil spill brought scenes of environmental devastation into the homes of many citizens, again raising the pressure for government efforts to protect the earth. Finally, environmental devastation wrought by the War in Vietnam served to engage more activists in the movement and broadened its appeal.<sup>138</sup>

These developments notwithstanding, the most important event in the environmental movement was Earth Day in 1970. Wisconsin senator Gaylord Nelson was the intellectual architect of the campaign. In 1969, he argued for a national teach-in on the “crisis of the environment” at a Seattle symposium. The proposal was largely an effort to distance the struggle from the New Left militancy that permeated the era.<sup>139</sup> In many ways, this distinction largely highlighted the fractured nature of the environmentalist cause. As with most other social movements, a distinction between radicals and reformists arose. Radicals took more militant direct-action, including not only protests, but often property destruction and violence as well. Reformists, on the other hand, attempted to work within the system on legislative initiatives, administrative and regulatory action, court challenges, and electoral politics. As with civil rights and feminism, radicals died out while reformists lived on.<sup>140</sup>



Both radicals and reformists participated in planning for Earth Day, however, and the event was a dramatic success. More than 20 million Americans participated, including 2,000 colleges and universities, 10,000 elementary and high schools, and several thousand communities.<sup>141</sup> Environmental Teach-In, Inc. had helped in organizing after its 1969 formation, as did Environmental Action after its 1970 emergence. In the same year, the League of Conservation Voters was formed, which rated politicians on their environmentalist stands. Also contributing to its success was the immense media coverage. They carried stories relating to population growth, air and water pollution, wilderness contamination and deforestation, and pesticide use. They also framed their reports to suggest that cleanup and technology, not vast societal change, was the answer to the environmental question. This served to further isolate radicals.<sup>142</sup> Conversely, more prominently established groups, such as the Sierra Club, the National Wildlife Foundation, and the Audubon Society, generally did not participate because they were afraid the event might compromise their narrow foci.<sup>143</sup> It was clear that the event's success was largely attributable to the media and grassroots organizing.

Subsequent years saw an increase in membership roles of newly emerging environmentalist groups and adaptation of older reformist organizations. These developments rapidly facilitated governmental responsiveness. Seizing on growing popular support for environmental action, President Nixon signed one of the most substantial bills into law three months before the first Earth Day. The National Environmental Policy Act (NEPA) created the Environmental Protection Agency (EPA) and required impact statements for all federally funded building projects. The 1970 Clean Air Act revisions regulated the emissions of 189 smog-causing pollutants,

including forcing factories to install “scrubbers” to filter their waste and emissions of sulfur dioxide, which is a leading component of acid rain. Further, the act mandated the installation of catalytic converters in automobiles and forced oil companies to produce unleaded gas.<sup>144</sup>

Two years later, Congress passed the Clean Water Act. It required steps to clean up damaged waterways and regulated the release of chemicals into the bodies. DDT was also banned that year, and the Ocean Dumping Act applied many of the standards and concepts of the Clean Water Act to oceans as well. By 1973, Congress passed the Endangered Species Act, which allowed the government to list animal species as threatened or endangered, making an effort to save wildlife from human impact for the first time in the nation’s history. Although the movement showed no signs of slowing, the year 1973 would present an enormous obstacle to environmentalism. The Organization of Petroleum Exporting Countries (OPEC) organized an oil embargo against the United States. At the time, the country imported one-third of its oil from those countries, which caused substantial inflation in its absence. Faced with presumed tradeoffs between environmentalist action and economic security, Nixon reversed course and tempered his environmentalist approach. After his resignation the next year, Gerald Ford largely followed in his footsteps.<sup>145</sup>

Yet current events precipitated the passage of further reform. The dumping of toxic chemicals in Virginia’s James River, PCB contamination of the Hudson River, and chemical poisoning of Michigan livestock resulted in the 1976 passage of the Resource Conservation and Recovery Act (RCRA). This legislation regulated toxic waste during all aspects of its development, disposal, and treatment. Further, Congress enacted the

Toxic Substances Control Act, which mandated the inspection and removal of dangerous asbestos from schools and required testing of radon gas there as well. It also forced testing of all chemicals entering or produced in the United States to make sure that they were well screened and regulated. As rising energy costs and inflation mounted, Ford became increasingly unpopular, but his replacement, Jimmy Carter, would face many of the same difficulties. Trying to combat rising energy costs, Carter established the Department of Energy in 1977 to catalogue and regulate energy consumption. Drawing on congressional legislation enacted in 1975, he oversaw increased fuel efficiency standards for automobiles and a national speed limit of 55 miles per hour. Current events happening in his tenure, such as the Love Canal incident and the "Valley of Drums," caused Congress to pass the Comprehensive Environmental Response, Compensation, and Liability Act in 1980. This bill taxed industrial chemicals to create a "Superfund" for cleanup of toxic waste.<sup>146</sup>

Toward the end of the 70s, however, business groups became better organized to combat environmental legislation. With large public relations apparatuses, they successfully convinced much of the American people that regulation would imperil their economic opportunity. With their efforts and an inherited fiscal crisis, Carter was doomed to fail in his 1980 reelection bid. Ronald Reagan won the presidency and instituted major rollbacks of environmental reforms, featuring deregulation and deference to business interests. He led a conservative backlash that undermined many of the initiatives of the earlier decade, and after his departure from office, the public became increasingly apathetic to environmental concerns.<sup>147</sup> Nonetheless, the many agencies and interest groups that formed and still remain have contributed greatly to increased



environmental regulation in America. While college students contributed little, the impact of others is still witnessed to this day.

### **Concluding Thoughts**

While the conservative backlash of the late Seventies and Eighties largely quashed widespread progressive student activism, their actions have massively transformed society. The civil rights movement has substantially improved the plight of African-Americans, ending de jure segregation in America. The Free Speech Movement at Berkeley facilitated anti-war efforts and may have impacted free speech regulations across the country. The anti-Vietnam War movement, although militant, is largely credited with ending the conflict. Women's liberation has drastically altered the position of women in society and drew mightily from the ideas of students. Environmentalism, on the other hand, had less student participation, but it has substantially altered environmental policy within the United States. If there is one common threat among the dissolution of these movements, it is increased factionalism, separatism, and militancy among their members. Further, FBI infiltration and disruption is a common theme. Students would do well to learn from these mistakes in the future, because without their acknowledgement, other efforts might be doomed to failure.

## **Section Two: The Histories of ACLU of North Carolina** **College Undergraduate Chapters**

Although the student protest movement largely faded with the conservative revolution, the new right quickly took advantage of student manpower to facilitate their goals as well. Existing since the late 1800s, the College Republicans are probably the best example of this trend. Over the past century their activists have accomplished enormous feats and developed a substantial talent pool from which the national Republican Party has drawn highly influential operatives – including Karl Rove, Ralph Reed and Jack Abramoff. They have generated publicity from activities ranging from delivering the state of Massachusetts to Reagan in his 1980 presidential campaign, to “affirmative action” bake sales.<sup>148</sup> Using their 1,175 campus affiliates nationwide, which are coordinated by student leaders at the state level and the national office as well, they create a substantial volunteer base to distribute literature, work on campaigns and influence the political process.<sup>149</sup>

The ACLU, on the other hand, has no such structure. In many cases, student chapters work semi-autonomously without substantial guidance or coordination by state or national operatives. In North Carolina alone, undergraduate chapters have started and gone inactive at East Carolina University, Western Carolina, Wake Forest University, UNC Wilmington, and UNC Chapel Hill – the flagship school of the UNC system. Despite these failings, however, a few undergraduate chapters have formed and thrived.

Among those currently active are Appalachian State University, Duke University, N.C. State University and UNC Asheville. Their accomplishments, despite a lack of substantial coordination at the state level, have been notable and demonstrate the capacity of youth to further the organization's goals.

Over the past few years the Appalachian State ACLU chapter has been able to convince its chancellor to become only the second college or university chancellor in the nation to come out publicly against the HEA drug provision. In addition, they have more than tripled the size of their campus free speech zones, completely rewritten campus policies concerning the distribution of literature, increased due process protections for students charged with violations of the Code of Student Conduct, and dramatically altered and improved a panhandling ordinance passed by the local town council. The N.C. State chapter has been able to halt an intrusive pat down policy at football games with the help of an ACLU of North Carolina board member, and Duke University's chapter helped secure the dismissal of criminal charges against over 100 people following an illegal search that took place at an off-campus party. In all of these cases – although the state affiliate was aware and supportive of their actions – the student groups did almost all the work completely independently, not tying up their resources. If coordinated properly, such potential is limitless.



## **Chapter 3: A History of the American Civil Liberties Union of Appalachian State University**

### **1998-1999: A Chapter is Formed**

Aaron Pollack founded the American Civil Liberties Union of Appalachian State University in the spring of 1999, and the chapter immediately sprang into action. The first year featured two activist campaigns: one of relatively large scope, the other small but garnering a lot of publicity. The biggest undertaking was the first of the issues to develop on campus. The Academic Integrity Code – the school regulations for educational activity – was revised, and a new draft was explained in detail to the Student Government Association (SGA) in February of 1999. It had a number of measures that were troubling to the ACLU.

The proposed policy introduced an Honor Pledge that stated “no Appalachian student shall unfairly further [his or her] own academic performance and shall not impede the performance of any other student in the Appalachian Community.”<sup>150</sup> Of particular concern was the fact that professors could decide on a case-by-case basis to mandate that students write “HP” by their names for any assignment as a way of attesting to their adherence to the requirements. The ACLU was worried that students who did not feel comfortable subscribing to such a policy would automatically be branded as cheaters without adequate due process protections. Such students were also subject to compulsory speech against their will. Other aspects of the new code created more serious concerns. Students were forced to report any case of academic dishonesty to the “proper

administrators” or face sanctions as severe as the person actually engaging in the activity.<sup>151</sup> Further, other issues of vagueness surrounded the language of other provisions in the document.<sup>152</sup>

The representative body that best allowed the group to voice its concerns was Faculty Senate; SGA was largely unresponsive. The Academic Integrity Committee (AIC) – the group responsible for the proposed changes to the code – knew that they would have to have the support of the faculty to have a chance of getting the changes adopted with the administration. What they did not know, however, was the degree to which Faculty Senate would support the ACLU in its efforts to mitigate the harmful effects of the policy. When the AIC had initially been approached by the ACLU, the group showed little interest of cooperating to address its reservations. The Faculty Senate, led by ACLU Faculty Advisor Dr. Andrew Koch, made the committee take the organization seriously. In what amounted to an ultimatum to negotiate with the ACLU or watch the proposed changes fail in Faculty Senate, the body forced the two student groups into talks that would dramatically alter and improve the code. The “HP” requirement, the compulsory tattling provision and other issues of vagueness were completely resolved. In fact, the first two provisions were removed from the policy altogether. It was a great victory for the fledgling organization.

The second activist campaign occurred in April of 1999. ACLU members, incensed by student government’s proposal to support parental notification for repeat alcohol offenses, showed up to picket the meeting where the vote would take place. They opposed the measure on three grounds. First, the group felt that while the action was legal, it posed a serious threat to the privacy rights of students. Secondly, the measure

impeded students' ability to develop autonomously, as adults, in the university setting. Finally, it lacked student support. Although the SGA passed the resolution, with the administration later codifying it into university policy, they were severely castigated for their abuse of student trust.<sup>153</sup> The ACLU railed against the body in informal discussion for over an hour that night. Its actions gained coverage in the student newspaper, providing the first press coverage of the group.<sup>154</sup>

### **1999-2000: A Shift in Focus to the Educational**

By the beginning of the next semester the founder of the club had transferred to another school and new leadership took over. Activism efforts ceased in 1999 and focus shifted to educational campaigns. In the fall of 1999 the group set up a display for Banned Books Week, highlighting censorship of important literature and works of art. They also staffed contact tables in the W.H. Plemmons Student Union to raise awareness about the organization, its positions, and a number of civil liberties issues. Among them were students' rights in search and seizure situations, abortion, and drug policy reform. Aside from these efforts, the club pursued little action. It was a less productive year for the group, but the future would be much brighter.

### **2000-2001: The Chapter Picks up Steam**

The ACLU chapter kicked off the fall semester of 2000 in familiar territory: Banned Books Week. The group created a display for the occasion and placed it in the student union on the week of September 23rd-30th. By all accounts, the event served its purpose. Students were exposed to the message of the display in a highly traversed area of campus.



On the other hand, the chapter was ready to branch out and take a more active role in campus politics and determined that Student Government Association would provide the best forum. After all, SGA received the most campus press and acted as the formal voice of the student body. However, since the SGA had largely been unresponsive to ACLU concerns in the past, the chapter decided to use allies within the body and its own members to introduce legislation addressing its positions.

The first attempt to do so commenced late in the fall semester of 2000. It involved opposition to the little-known Higher Education Act Drug Provision in section 484(r) of the law. The measure, troubling in and of itself, also had a troubling history. Mark Souder (R-IN) attached it as a committee amendment in 1998 during its reauthorization process without a recorded vote or debate.<sup>155</sup> Although the alteration gained little attention during its passage, it made substantial changes to eligibility for federal student financial aid. The original Higher Education Act was passed in 1965 to expand opportunities for college education. It established federal financial aid programs such as PLUS loans, work-study loans, Perkins Loans, Pell Grants, and supplemental educational opportunity grants.<sup>156</sup> The Souder amendment had the opposite effect by limiting opportunities for some students.

At the time of the campaign, the provision delayed or denied federal financial aid to potential and current students who had been convicted of a drug offense. For individuals found guilty of their first violation for possessing a controlled substance – whether planning to attend an institute of higher learning or already enrolled at one – eligibility for federal financial aid was lost for one year. The second offense rendered the student incapable of obtaining benefits for two years, and the third resulted in an indefinite

suspension. The penalties were much stiffer for those students convicted of selling illegal drugs. The initial violation resulted in a two-year denial of aid, while the second prompted an indefinite prohibition. Although some students could become eligible for reinstatement of benefits after completing a drug rehabilitation program that satisfied the requirements of the law, no financial assistance was provided to complete the program.<sup>157</sup>

The government found out about the convictions based on responses to the Free Application for Federal Student Aid (FAFSA). If students left question 31 blank, which asks applicants if they have been convicted of possessing or selling illegal drugs, the students had to complete a worksheet determining their eligibility status for benefits. The same held for students that answered “yes.” Only by answering “no” could students hope to receive financial assistance.<sup>158</sup> Noticing the discriminatory impact on middle and low-income students, as they are the only ones that need to apply for aid; racial minorities, who are prosecuted and convicted for drug violations far beyond their reported rates of use; convicted offenders, who are seeking to rehabilitate and become productive members of society through higher education; and its deleterious punitive effect, destroying opportunity while failing to serve as a deterrent to crime, the ACLU of Appalachian State set out to pass a bill in student government to voice opposition to the measure and raise awareness about it.

Beginning in December of 2000, the student ACLU started researching and preparing to draft the resolution. In a campaign initiated and led by ACLU Vice President Ian Mance, SGA Senators Patrick Cash, Ryan Eller, and Paul Funderburk, who was also the ACLU’s secretary at the time, the group embarked on what would turn out to be one of the greatest struggles of their college careers. Realizing the measure might be

controversial, the activists coordinated with other campus groups in an attempt to widen a coalition of support and conducted thorough research about the discriminatory aspects of the law. They worked with the campus chapter of Help End Marijuana Prohibition (HEMP), which staffed contact tables with petitions of support in the W.H. Plemmons Student Union the week before the vote. They also worked with the student chapter of the National Association for the Advancement of Colored People (NAACP), which wrote a “wholehearted” letter in support of repealing the HEA provision to SGA. ACLU manned tables in support of the proposal as well. The group also created and disseminated surveys on campus, which ended up showing that 73 percent of students were in favor of HEA reform.<sup>159</sup> After all their efforts the sponsors were very optimistic about its chances for success and expected little resistance from members of SGA. Apparently, the body had other plans.

The Rules Committee screening, which was conducted on the night before the floor vote in the senate, resulted in an unfavorable recommendation for the legislation. An unfavorable recommendation basically means that the legislation is not researched adequately or is not written well enough to be forwarded to university administrators. The recommendation is supposed to be made strictly according to the above criteria, not personal opposition to the measure. This decision is voted on by committee members, and given the amount of work put into the legislation, its authors and supporters suspected an ideological bias in the decision. The nonrecommendation would serve only as a harbinger of things to come.

The next day, March 20, 2001, brought a similar turn of events. After a lengthy debate on the floor, the body voted 22-24-2 to reject the resolution. Despite



overwhelming support from campus groups and the general student body, senators opposed the measure based on criticisms of petition wording, survey methods and the Rules Committee's recommendation. Predictably, two of its most vocal opponents were Rules members themselves.<sup>160</sup>

SGA was not the only group that had a different view than the students. The editorial board of *The Appalachian*, the campus newspaper, also came out in support of student government's decision. Arguing that opposing the HEA Drug Provision would condone drug use, fail to adequately punish offenders, add to negative stereotypes about the school's drug use, and "challenge the will of the U.S. Congress," which was presumably a bad thing, they quipped that "repealing such statutes would be detrimental to a nation already in the midst of a moral decline."<sup>161</sup> Five days later, *The Appalachian* published another editorial suggesting that SGA focus on "campus" rather than "federal" issues.<sup>162</sup>

Although the bill was defeated, it still was successful in two respects. First of all, it raised awareness about the financial aid issue at Appalachian State University, which might have actually helped some students avoid termination of their aid. Secondly, it encouraged more members of the student body to become involved in fighting the law. Chief among these students were H. Dustin Bayard, who had manned contact tables for the HEMP club in support of the measure, and Ian Mance, the initiator of the proposal and then co-president of the ACLU. Not content to let the issue die, the activists joined Paul Funderburk in recruiting new members for student government and revising the legislation. They submitted an amended resolution in April, and it passed the body by almost a two-to-one margin. Unfortunately, the bill was not out of the woods yet.

Despite the increased level of support, SGA President Ryan Bolick still had the power to veto the measure. He was an ardent opponent of the proposal and the initial prospects did not look promising. In light of this development, the trio began an extensive lobbying campaign including student e-mails, phone calls and personal visits to persuade him not to kill the resolution. The tactic was successful in the end. Due to the substantial support of the senate, the efforts of its proponents, and his desire not to let his own personal biases destroy the authors' hard work, the president decided not to veto the legislation. Instead, he opted to let it sit on his desk for ten business days and then passed it on to the administration without his signature. It was a great victory for the group.

### **2001-2002: The Student Chapter Moves Full Speed Ahead**

Student Government Association was not the only voice the ACLU wanted to redirect in an effort to support HEA reform. Only one chancellor had come out and made a public statement about the drug provision at the time, and the ACLU wanted to make Appalachian State University's chancellor, Frank Borkowski, the second. In a meeting initiated by Ian Mance, Bayard and Mance met with the chancellor to lobby for his support on the issue. The discussion was a tremendous success. Chancellor Borkowski came out in favor of repealing the drug provision in a letter to the district's congressman, Representative Cass Ballenger. In it he uttered the following words:

I support without reservation our students' support of this legislation. As a lifelong educator, it is my experience that when given the opportunity to excel, the results with students who have past drug convictions [have] been overwhelmingly positive. The very fact that these students are taking the initiative to do something positive with their futures speaks volumes to their commitment to their education. It is counterproductive to deny education to any student, especially in communities that are already marginalized in today's society. <sup>163</sup>

In light of the September 11th terrorist attacks upon the nation, however, Representative Ballenger had other priorities. Yet having the school's chancellor come out and publicly denounce the law, as only the second chancellor in the nation to do so, was no small feat. Although the law was not substantially altered in the coming years, the ACLU had taken the issue as far as it could, and it soon began to focus on other activities.

In the fall of 2001 privacy rights of students were being jeopardized at the campus level, and the chapter came to their defense. The campus police initiated a safety program called "Smartees and Dum Dums" to remind dorm residents to keep their doors locked. It was the brainchild of Officer Stacy Sears. Policemen would walk down the halls of each floor in the dorms, knock on the doors of residents' rooms, and tape Smartees candy on their doors if they were locked. For those whose doors were unlocked, the police would breach the dwelling without probable cause and deposit Dum Dums on a surface or tape them to the back of the door. While the program was well intentioned in its effort to reduce campus theft, it was an unreasonable infringement on student privacy. In response, Ian Mance, Dustin Bayard and Paul Funderburk all met with the ASU Police Chief Gunther Doerr to discuss the problem. After intensive talks and internal deliberation, the campus police suspended the program. Students no longer had to worry about this infringement on their rights.<sup>164</sup>

Near the end of the semester it was clear that the September 11<sup>th</sup> attacks were changing America's actions domestically and in the world. In an effort to create a campus dialogue on the issue, the university invited Nadine Strossen, the national president of the ACLU, and Jonah Goldberg, the editor of the *National Review Online*, to



debate numerous topics with a focus on racial profiling. For the purposes of the ASU chapter of the ACLU, Strossen's visit was a special one. Ian Mance and Paul Funderburk, officers for the club, dined with her the night of the event. Afterwards, the debate was fierce. Nadine's position, while eloquent, was relatively simple: "Race cannot become a proxy for ... individualized suspicion...[Racial profiling] is not only an unwise use of resources, but it is a counterproductive and overall ineffective method of law enforcement." Goldberg countered with the following argument: "If there is one slot-machine in a casino that is known to pay off 10 percent more than any other, then that's where the people will turn their attention toward.... It is a horrible truth in our society that certain people can often be attributed to negative actions in many neighborhoods."<sup>165</sup> Although many frightened Americans supported racial profiling after the attacks, and still do, descriptions of the Bush Administration's disruption of a terrorist plot to hijack planes and fly them into the U.S. Bank Tower in Los Angeles shortly after 9/11, have indeed demonstrated the validity of Nadine's point. The Los Angeles plot – designed by Khalid Shaikh Mohammed – used Southeast Asians as hijackers in an effort to take advantage of suspicion of Arabs.

Campus events demonstrated the national climate of fear as well, and one of them in particular caught the ACLU's attention. Dustin Bayard, apart from his role as a member of the ACLU chapter, decided to stage a protest of United States foreign policy prior to the invasion of Afghanistan. The following narrative is based on his account. A group of 12 students peaceably assembled on Sanford Mall without a permit from the university seeking to participate in the event.<sup>166</sup> The location was and still is the most visible common area on campus. They held up signs objecting to America's foreign policy and

silently distributed flyers about the topic to students that were interested in the demonstration.<sup>167</sup> The response was mixed, but largely negative.

Twenty-five minutes after the event commenced, the ASU police approached the protesters. Dean of Students Barbara Daye arrived shortly after law enforcement. Bayard, who was present at the protest, asked the Dean why the authorities had been called. She responded by informing him that the university controls the time, place and manner in which events take place. She noted that the protestors' presence without a permit was in violation of school policy. Ms. Daye then moved and began to discuss the event with a representative of the student union, which is located directly behind the mall. Within a brief period of time, an ASU police officer confronted Bayard, stating that he looked like the lead activist and must disperse within one minute or face arrest. Dustin sat down upon receiving the command. By 12:30, the predetermined time the protesters had decided to end the event, the crowd dispersed. No arrests were made.<sup>168</sup>

The event did raise serious concerns with two university policies, however, and the campus chapter of the ACLU decided to address them. Rules regarding the distribution of printed materials on campus and the free speech zones were inherently unfair. The first concern was that the distribution of printed materials prohibited anonymous speech, requiring the name of the organization to be placed on the materials to be dispensed. Given that many of the country's most important historical documents were published anonymously, including the *Federalist Papers*, the ACLU sought to protect this form of discourse. Further, the policy had not been enforced in the past. In the fall of 2001, the Campus Crusade for Christ group launched a highly publicized "I Agree with Eric" campaign that featured anonymous flyers bearing that slogan as well as a meeting time to

hear what Eric had to say. He later shared the story of how he became a Christian at the highly successful event.<sup>169</sup> Seeing how anonymity had benefited their group, Paul Funderburk and Ian Mance began to draft legislation calling for this standard to be extended to all other students as well.

In addition to not enforcing some speech codes, other events had occurred that were equally troubling. A couple of years earlier a situation took place in which Appalachian State University officials rewrote a school policy to allow censorship based on content. The change was precipitated by a poster displayed behind a National Organization for Women contact table in the student union. The group borrowed from a famous national campaign organized by NOW during George HW Bush's first presidential bid. It read "The only Bush fit for Office!" and exhibited a representation of the female genitalia. Calling the display "obscene," student union officials rewrote the Contact Table Policy to read, in part:

Because the Contact Tables are located in an open space regularly traversed by numerous members of the University community and by (among others) the families of prospective students (including minors), the Plemmons Student Union reserves the right to regulate the uses of the Contact Tables... North Carolina law prohibits the publication or exhibition of obscene material...that expose[s] persons to ridicule, contempt, or aversion...<sup>170</sup>

The ACLU was troubled by the potential lack of content-neutrality and began to research other policies within the student union as well. The policy for booking display cases was even more offensive. It read: "Because of the public nature of the cases, the Plemmons Student Union reserves the right to regulate the content of the display."<sup>171</sup> Viewing both these policies as violations of students' free expression rights, in addition to seeking protection for anonymous discourse, Ian Mance and Paul Funderburk drafted a



bill in student government to rewrite the provisions. The issue seemed pretty cut and dry, but apparently it was not so clear to everyone.

In yet another case of elite opposition, the vice president of student government, Amanda Privette, tried to block the introduction of the legislation on dubious grounds. The legislation included student testimonials of the aforementioned events, among others, and its authors felt it necessary to convey these accounts directly to the administration in the bill. Privette felt differently. She refused to bring it to the floor, insisting that they be attached as an addendum. After meeting with the vice president, Ian Mance refused this request, and he and Funderburk set out to encourage her to reverse the decision. At the SGA meeting that night, January 27, 2002, they rose in informal discussion and expressed outrage at the move. Paul rose first, followed by many others, including Mance and Bayard. By the end of the evening at least ten senators expressed their disapproval. The statements had a cumulative effect on the vice president; she reversed her decision the next day.<sup>172</sup> Mance and Funderburk went on to pass the legislation and it was later adopted by the administration.

The second issue that the demonstration brought up was the free speech zones, and the ACLU found them lacking substantially in accessibility and location. At the time of the incident, the only free speech zone – space in which students could protest without a permit – was a small amphitheater located in a low traffic area of campus. Mance and Funderburk joined with Bayard, Chris Nelson (the other ACLU co-president), Mark J. Miller and Steve Wussow to introduce legislation calling for its expansion. In a bill introduced in mid-February, the senators proposed that the areas be extended to allow for

unamplified assembly on all of Sanford Mall and Duck Pond Field.<sup>173</sup> It passed after much debate.

Mance, Funderburk and Bayard followed up by meeting with the chancellor, the assistant university attorney and the vice chancellor for student development to lobby them on the issue. Unfortunately, the vice chancellor was not very accommodating at the discussions. Dr. Blimling would frequently interrupt ACLU members, speaking over them, and talk for an extended period of time. It was akin to a filibuster. With the meetings reaching an impasse, Funderburk and Mance began to place their energy in another direction while planning their next move. With the latter doing the lion's share of the work, the two began to look at drafting a piece of legislation calling for the establishment of a GLBT center on campus. They joined with members of Bisexuals, Gays, Lesbians and Allies Associated for Diversity (B-GLAAD) in the efforts as well.<sup>174</sup> A task force was suggested by administrators and formed shortly thereafter, but no GLBT center came about as a result of the task force. The development would convince the ACLU that task forces and committees were of little benefit in accomplishing their goals. Nonetheless, some good came from the efforts because the task force still exists today and regularly discusses important campus issues facing the lesbian and gay community.

As these events transpired, the campus chapter discussed their next move regarding campus free speech policies with their faculty advisor, Dr. Andrew Koch. He believed that a Faculty Senate resolution supporting the ACLU proposals was in order. As a member of the body he worked hard to make its success a reality, and in late March, the group followed the students' lead by passing a motion calling for the changes.

Nevertheless, the administration remained steadfast in its refusal to alter the policies with

no progress coming in subsequent talks. Hearing of litigation challenging free speech zones at the University of West Virginia, Koch recommended that the ACLU contact the group working on behalf of students there, the Foundation for Individual Rights in Education (FIRE), and Paul Funderburk got in touch with them shortly thereafter. They agreed to take the case.

In the first instance of national publicity received for a project that the campus chapter of the ACLU had worked on, NPR featured a segment in late April on the free speech zone issue and FIRE's efforts to combat them at West Virginia and Appalachian State.<sup>175</sup> As the summer months went by, Funderburk corresponded on multiple occasions with their attorney, Greg Lukianoff. Funderburk sent Lukianoff copies of the school policies and Lukianoff was stunned at how restrictive they were, particularly the guidelines regarding the free speech zones. In the subsequent months, Lukianoff began to prepare a legal challenge to the policy on behalf of several ACLU students. With the tremendous amount of work done by Mance, supplemented by efforts from Bayard, Funderburk, and the assistance from FIRE, it appeared as though the university had met its match.

### **2002-2003: A Proliferation of ACLU Activity**

By the beginning of the 2002-2003 academic year, the administration agreed to rewrite free speech policies. It is unclear whether or not their decision was made in response to FIRE's impending litigation but intuition suggests that to be the case. In the new policy, taking place in August of 2002, the university met virtually all of the ACLU demands. The display cases and contact tables took on a content-neutral standard, and anonymous speech was protected for public postings. Individuals and groups also



became eligible to distribute non-commercial printed materials at any open, exterior campus space without prior registration or approval.<sup>176</sup> Further, the university expanded the free speech zones to include Duck Pond Field and the statue area on Sanford Mall for unamplified speech.<sup>177</sup> The ACLU's hard work had paid off.

The chapter was extremely productive the following semester by passing legislation in SGA concerning a number of issues. Based on an account from an aggrieved student, the group began to research due process protections in Judicial Affairs – the body charged with prosecuting violations of the Code of Student Conduct. The protections were severely lacking. First of all, if a student decided to have his or her case heard in front of a Student or University Judicial Board – the school equivalent to a jury – a simple majority could find the individual in violation of the code and sanctions would occur. Secondly, the board made their decision based on a “preponderance of the evidence” standard, the lowest possible benchmark for determining guilt. Such a standard basically holds that board members believe it more likely than not that the student violated the policy. Finally, while a student was allowed to prosecute the case, the student acting as an advisor to the defendant was not allowed to speak at the proceeding.<sup>178</sup> With the future of an individual's education at stake, Mance, Funderburk and Bayard sought to increase the safeguards for students.

The trio authored a resolution requesting three changes to the policy. The first called for a unanimous decision of board members for conviction. The second requested that the criteria for guilt be altered to a “clear and convincing” standard, meaning that it is highly probable that the claim is true. This measure would have provided more protection than the “preponderance of the evidence” standard but less than “reasonable

doubt.” The last sought to allow the student acting as counsel for the accused to speak on his or her client’s behalf.

On February 11, 2003, the resolution passed Student Government by a wide margin.<sup>179</sup> A week later, however, the assistant director of Judicial Affairs, Karla Rusch, came out against the proposal in *The Appalachian*. She said, “All of these changes would make the process a more legal process. In fact, this is meant to be a very different process, an educational process.”<sup>180</sup> The authors of the bill disagreed. With the equivalent of a jury, a legal standard used in civil cases, student representatives acting as prosecution and defense, and the potential to expel a student from school, Mance, Funderburk, and Bayard thought they were correct in their assessment. Nonetheless, they were unable to persuade Judicial Affairs to adopt all of the reforms. In a partial victory for the ACLU, the office rewrote its policy to require a two-thirds vote to find a student in violation of the Code of Student Conduct. They also agreed to allow ACLU Co-President Ian Mance to serve on the committee to promote the following year’s judicial board, as well as the Academic Integrity Committee – the body tasked with coming up with Academic Integrity Code.

After being contacted by People of Faith Against the Death Penalty and North Carolina Moratorium Now, the next issue the group decided to take up was a moratorium on the death penalty in North Carolina. The ACLU was supportive of a moratorium – a temporary halt on the death penalty so it can be studied and applied more fairly – on numerous grounds. Many individuals have been released after being sentenced to die, highlighting convictions of the innocent and flaws in the process. Further, the Supreme Court has struck down numerous rights to appeal in recent years, increasing the chances

of executing an innocent person. Moreover, the death penalty unfairly targets the poor, with the vast majority of those tried on capital murder charges being unable to afford an attorney. Finally, as applied, the practice is racially discriminatory when taking into account the race of the victim. Those that kill whites are much more likely to get the death penalty than murderers of non-whites.<sup>181</sup> Taking these issues into account, Ian Mance, Paul Funderburk and H. Dustin Bayard authored an SGA resolution supporting a moratorium.<sup>182</sup> Once again, some senators would not see the issue in the same light as the club.

There was a contentious debate in student government and opponents of the legislation went to extraordinary lengths to try to kill the proposal. At the beginning of the meeting the opponents of the legislation distributed flyers to every senator recalling that the rapist and murderer of a former ASU student was on death row. The flyer stated, "Send a message to admitted rapist murderers like Daniel Lee. Vote No on the moratorium."<sup>183</sup> Despite their best efforts, however, the literature did not have its desired effect. After a lengthy debate the body adopted the proposal 30-17-5. Appalachian State University joined North Carolina State, the University of North Carolina at Chapel Hill and the University of North Carolina at Charlotte in voicing support for the halt. Although some senators suggested that SGA work on more campus-oriented issues, ACLU Co-President Paul Funderburk described the importance of the bill in the student newspaper after its passage: "I think that focusing on national issues is sometimes a good thing for a university because it promotes dialogue on campus about those issues; it leads to better educated voters and citizens."<sup>184</sup>



The final issue the group addressed in 2002-2003 involved the free exercise rights of religious minorities. Hillel, which is the Jewish student association on campus, and the Pagan Student Association felt that the university did not adequately allow them to practice their faiths. Responding to their concerns, Ian Mance, Paul Funderburk, Howard Schrieber, Josh Walker and Meagan Wood sponsored a bill to alter existing policy. The proposal called for Housing and Residence Life to allow all students candle burning in the dorms in accordance with their religious observance. While the university rightly raised safety concerns, the group was able to counter that nationally, smoking, which is allowed in many dorms, is the leading cause of dorm fires; cooking is the second most frequent cause, and candles are third. Yet in the case of candles, fires occur when they are unattended, particularly after students fall asleep. Students using candles in accordance with their faith maintain strict supervision of the flame; to do otherwise would violate their religious teachings. Surprisingly, the measure passed Student Government unanimously.<sup>185</sup> Regardless of the development, however, the university administration barely budged in making changes to the policy. Although they slightly altered the standard to allow candles in some public areas, the change was hardly becoming of an institution committed to diversity.

### **2003-2004: The Makings of a Well-Established Group**

By the academic year of 2003-2004, the American Civil Liberties Union of Appalachian State University was starting to branch out into the local community. The group, particularly its Co-President Ian Mance, was becoming a point person for civil liberties issues facing Watauga County and the town of Boone. When *The Appalachian*

covered a gross misuse of authority by District Attorney Jerry Wilson, who began to prosecute people with methamphetamine labs under weapons of mass destruction statutes, they called Mance for a reaction. He said the following:

DA Wilson is undermining the intent of the state legislature, exploiting the national climate of fear for personal political gain, and stretching the failed drug war to new, even more outrageous limits... A conviction in this case would be historic... It would essentially mean that under the government's newly expanded powers, non-violent drug offenders could now face up to life imprisonment, if prosecuted as domestic terrorists for crimes that previously would have warranted relatively short sentences.

Mance's engagement in the town went far beyond newspaper articles as well. Dr. Andrew Koch, the club's faculty advisor, got wind of a proposal by the Downtown Boone Development Association (DBDA) to criminalize panhandling in Boone and wanted Ian to represent the group in the process. The DBDA was concerned that tourists were offended and unnerved by the presence of such individuals and was seeking to ban them from the downtown area. Since Koch knew some people on the town council, and they had planned to establish a vagrancy task force to look at the issue, he was able to get Mance appointed to represent the ACLU.

The original ordinance proposal was exceedingly draconian. Among other things, the original draft would have made it illegal to engage in aggressive begging, panhandling, or soliciting within the corporate limits of the town.<sup>186</sup> Arguing that solicitation and panhandling are constitutionally protected speech, and backing it up with case law, Mance was able to get the ordinance reduced to a much less offensive measure. In the end, non-aggressive solicitation and panhandling were protected and the rights of the homeless were as well. Much to the chagrin of local business owners, the final version lacked the teeth necessary to keep the indigent away from their wealthy clientele.

In November of 2003, the campus chapter returned to fight in student government once again by introducing legislation dealing with the USA PATRIOT Act. The bill was principally authored by ACLU Vice President H. Dustin Bayard with assistance from Co-President Ian Mance. ACLU chapter members Evan Moody, Miriam Makhyoun, Amanda Zeddy and H. Dustin Bayard sponsored the resolution. The measure called for SGA support of a pro civil liberties resolution, initiated by Dr. Matt Robinson, which was being proposed in the town council. Once it reached the floor it was debated for an hour and a half, and after the smoke cleared, the legislation passed the student senate.<sup>187</sup> The town council passed the pro civil liberties resolution the next year<sup>188</sup> and it is now one of almost 400 town council resolutions criticizing certain provisions of the law.<sup>189</sup>

In the spring of 2004, the ACLU would again take up religious freedom on campus. ACLU member Amanda Zeddy, along with Jarrett Sparks and Howard Schreiber, would introduce and pass a resolution in SGA calling for faculty to excuse absences for religious observances without penalty. It passed overwhelmingly on February 10th.<sup>190</sup> Unfortunately for religious minorities on campus, Faculty Senate would not acknowledge religious absences for students until late 2005. Even then, however, the policy change simply encouraged faculty to allow such absences without penalty; it did not require it.<sup>191</sup> Matt Manes from Hillel precipitated the action, though the ACLU did offer him assistance, which he declined. Nonetheless, the measure was a step in the right direction and no students have come to the ACLU to complain of rights violations concerning this matter since its passage.

In early March the group decided to expand its educational programming and initiated an event that would be repeated for years to come. The chapter's experiences spawned



the idea. During Mance's work on HEA reform, he became acquainted with a drug policy activist named Steve Silverman. Steve was the executive director of the Flex Your Rights Foundation, a group devoted to educating people about their rights when stopped or questioned by the police. The organization had recently produced a film entitled *Busted: The Citizen's Guide to Surviving Police Encounters*. It was a perfect fit for the ASU campus. Mance and Funderburk booked a room in the W.H. Plemmons Student Union to screen the film while other ACLU members helped with publicity. Ian designed flyers that satirized police officers' relationship with drugs, and they were wildly popular. Over 200 people showed up for the event on March 3rd. It was a tremendous success.

Also in March of that year, the campus chapter took another issue to the student body in the form of an educational campaign. The group booked and manned contact tables for the National Day of Appreciation for Abortion Providers, an event sponsored nationally by the ACLU's Reproductive Freedom Project. Instead of limiting the event to one day, however, the campus organization raised awareness about the issue for an entire week. They distributed information about violence directed against doctors who facilitate a woman's right to choose and had supportive community members sign a letter of thanks to Planned Parenthood of Winston Salem, the closest provider in the region. Although some onlookers were angered by the event, it raised awareness and showed support to the people that needed it the most.

Later that month Amanda Zeddy, ACLU member, and Paul Funderburk, co-president of the ACLU, teamed up to work on a challenging issue: domestic partner benefits. After doing a considerable amount of research and discovering that health and dental insurance were not possible without the approval of the General Assembly, they set out to achieve

more modest goals. Meeting with Human Resources Director Len Johnson, Assistant University Attorney David Larry and contacting other schools, a picture began to emerge of what their proposal would look like. For the purposes of the legislation in student government, domestic partners were defined as members of the same or opposite sex who are (a) sharing a residence, (b) over the age of 18, (c) emotionally interdependent (d) and intend to reside together indefinitely. It was also noted that additional requirements could include demonstrable financial ties such as a joint checking account and/or residing together for six months with a signed affidavit attesting to the previously stated conditions. It was important to include heterosexual couples in this definition because failure to do so has been successfully litigated as discriminating based upon marital status.<sup>192</sup> Regardless, the proposal was a matter of basic fairness for those couples as well.

The authors made the case that failure to provide benefits to domestic partners, regardless of sexual orientation, violates the spirit and the letter of the university non-discrimination policy, which includes sexual orientation. In making that point, Zeddy and Funderburk proposed equal treatment of domestic partnerships compared with heterosexual marriages, as far as legally possible, including formal recognition, in writing, of benefits. Some perks were awarded on a case-by-case basis at the time but failed to meet that standard. Among those were library access, access to recreational facilities and access to counseling services for domestic partners. The legislation also called for the ability of faculty and staff to take sick leave to care for their domestic partner if they were ill and sought to grant DP's access to term life insurance policies, a benefit UNC Chapel Hill had already implemented.<sup>193</sup> The Faculty Senate followed suit,

calling for an extension of domestic partner benefits as far as legally permissible but did not call for formal recognition. Partially as a result of the omission, the ACLU has been working from the fall semester in 2004 through the spring of 2006 trying to secure that status. As recently as the spring semester of 2006, the campus chapter, led by President Paul Funderburk, has been encouraging Faculty Senate to introduce a new resolution calling for the measure. It is unfortunate that despite verbal support from Chancellor Peacock, the new head of the school, the process has yet to be completed.

The group closed out the semester with one last resolution, co-authored by Paul Funderburk and Amanda Zeddy, which proposed posting a sign in the school library that listed student and faculty rights under the Patriot Act. The proposed sign would have copied the exact the language of a University of Rhode Island library display that read as follows:

Under Section 215 of the USA PATRIOT Act, records of materials you have borrowed from this library may be obtained by U.S. Federal Agents without your knowledge or consent. Please send all correspondence to: Attorney General John Ashcroft, Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.<sup>194</sup>

Although the measure passed easily, and had been implemented at another school, it was not posted at Appalachian State for two reasons. The first was that the assistant university attorney reviewed the statute and concluded that the sign was unduly vague and the Family Educational Rights and Privacy Act (FERPA) protected student privacy. He did not reject the proposal outright, but suggested much more extensive wording, including lengthy distinctions between student and faculty protections. The second and most important reason involved the university librarian, Dr. Mary Reichel, and her actions to protect the privacy of patrons. The school library had adopted a policy of



deleting every record of books checked out, keeping tabs only on books that were currently borrowed or had late fees. In light of this revelation, the sign became a moot point.

### **2004-2005: The ACLU Reaches Maturity**

The fall semester of 2004 saw the rise of new leadership once again, with Amanda Zeddy elected as vice president of the American Civil Liberties Union of Appalachian State University. Ian Mance and Paul Funderburk remained co-presidents, and the entire campus benefited when ACLU chapter member Miriam Makhyoun was elected as student body president for the 2004-2005 academic year. Immediately she took up an old campus issue, the free speech zones. After numerous discussions with a new administration over the summer, the school expanded the zones a second time. As of August 2004, all of Sanford Mall was added to the list of unscheduled speaking areas, as was Durham Park, which is a low traffic area adjacent to the university tennis courts. It was a great victory for free expression: one that was much easier with new faces occupying the upper echelons of campus policy making.<sup>195</sup>

The victory would be short-lived, however, as a new threat to the free exchange of ideas emerged on campus. Student Government Association Vice President Nick Albu e-mailed Director of Student Programs Dave Robertson at the beginning of the academic year with an inquiry. The school hosted a poster sale by the Beyond the Wall poster company at the beginning of each semester, and in an effort to begin a dialogue on the issue, Albu asked about the content of some of the posters in light of campus efforts to

reduce alcohol and drug use. The correspondence set off a nasty chain of events as Robertson responded promptly and decisively. In a move not specifically requested by Albu, he asked Beyond the Wall to remove all posters from the sale that contained drug use, even those featuring Bob Marley, as well as prominently displayed posters depicting violence.<sup>196</sup> Needless to say, the ACLU was not happy about the university limiting any protected free expression from students, including these materials.

Chapter Co-President Ian Mance was incensed when he learned about the development. He immediately went to the SGA office to confront Nick and talk to him about the ordeal. Albu supported the ACLU position and Mance set up a meeting with administrators to discuss the issue. Mance was unable to attend because of a work conflict, so Co-President Paul Funderburk went in his place. Interim Vice Chancellor for Student Development Cindy Wallace, Dean of Students Susie Greene, Assistant University Attorney David Larry, Director of Student Programs Dave Robertson, Student Government President Miriam Makhyoun, Vice President Nick Albu and a few other people were at the meeting.

It immediately became apparent that the university had the right to dictate the terms of the commercial relationship with the company, but that was not the issue at hand. The question raised by opponents was whether or not the university *should* restrict the sale, not *could* it. After more than an hour of discussions, the meeting reached an impasse, with Robertson not budging, and Makhyoun, Albu and Larry siding with Funderburk, who was the most outspoken opponent of the restriction. Susie Greene and Cindy Wallace's positions were unable to be determined at that time.

By late September there was no movement from the administration and Amanda Zeddy and Paul Funderburk began to write legislation addressing the issue. It was here that the ACLU's view would be articulated once more, with the voice of the student body behind it. Their argument was two-pronged. They first asserted that the poster ban violated the principles expressed in the recent expansion of the free speech zones. After all, the new provision did state: "Consistent with its educational mission, the university encourages the free exchange of ideas on campus, while assuring that other important university interests and activities are not infringed upon or disrupted."<sup>197</sup> Certainly the depiction of drugs and violence on posters – images readily accessible on cable television provided in the dorms, in books read in classes and at any commercial vendor outside the campus – failed to meet the threshold of undermining "other important university interests." The second line of reasoning, as written in the legislation, went as follows:

The student body of Appalachian State University values the importance of freedom of expression in the context of creating an intellectual environment on campus and obtaining a comprehensive college education. The dissemination of ideas that conflict with government and/or university policy is not unlawful and is an essential element of free speech. As such, posters, as a vehicle of free expression, should not be censored based on content.<sup>198</sup>

In its totality, the bill simply requested a return to the content-neutral standard for poster sales that had been in place prior to the event. Yet as with virtually every ACLU proposal, the initiative sparked controversy.

Arguing on behalf of his actions, Dave Robertson spoke before student government on the night of the vote as a guest speaker. He asserted that the issue was not one of free speech, but the right of the student union to sell what it wants. Claiming that educators have an obligation to create an environment amenable to learning and study, the director



of student programs described discouraging illegal drug and alcohol use through restricting posters with such activity as part of that mission. He asked, "What are we communicating through what we sell?"<sup>199</sup> Paul Funderburk was also allowed to speak as a guest. He contested the statements, describing the issue as one of free expression due to the regulation of content. The co-president also denied that selling something endorsed the idea contained in it. On balance, the university cannot legally endorse a religion but religious posters are sold as well. Finally, Paul said that "the university should not be making content-based policies, especially when [the content] is contrary to government policy... College should be a place where students can protest government policy if they want to."<sup>200</sup> The ban "essentially sought to limit posters on the basis that they had concepts which conflicted with government policy," he said.<sup>201</sup>

The legislation went into four rounds of debate, and Ian Mance participated mightily and effectively as student senators yielded the floor to him. When all was said and done, the resolution passed 31-8 on October 12th.<sup>202</sup> At the time it was unclear what, if anything, would come of it. The answer arrived less than a month later; the university administration agreed to back the position articulated by the ACLU. The decision was made after discussions between Robertson and Chancellor Peacock, who heartily supported the bill. In subsequent years, the question has never been raised again.

In the meantime, the ACLU had hosted its second annual screening of *Busted*. The group reserved I.G. Greer Auditorium, a much larger space than the one booked the previous year. They sought to publicize the event to the fullest extent possible. By posting flyers on campus, mass mailing every student post office box, including an announcement on the school Internet service, and taking out an ad in the school

newspaper, the group had hoped to have a sizeable turnout. They were not disappointed. One hundred fifty one people showed up to the event. Those students were educated about their rights and presumably have applied their knowledge since the screening. The campus chapter of the ACLU was getting much better at providing valuable educational opportunities.

In the spring of 2005, the group embarked on two educational campaigns and one SGA proposal. As with the previous year, the club tabled a week for the National Day of Appreciation for Abortion Providers. The event was successful and contained all the same elements and outcomes of 2004. On the other hand, the organization decided to raise awareness about something else as well. After going to the state ACLU conference for college chapters at North Carolina State University and meeting a volunteer from North Carolina Coalition for a Moratorium (NCCM), the group decided to step up and assist the cause delaying death row executions once again. Tabling for a week, they distributed information and collected names and e-mail addresses of students, faculty, staff and others walking through the student union to sign them up for the NCCM action alert system. It was a small step but raised awareness on campus about the statewide movement.

The final action taken by the ACLU picked up where the campus chapter had left off in its earliest years, the parental notification policy. The bill was written and co-sponsored by Clark Anderson, the treasurer of the ACLU; Autumn Furr, a chapter member; and Amanda Zeddy, the vice president, with help from Paul Funderburk and Ian Mance. The measure sought to reduce penalties for marijuana offenses to an equal level with alcohol violations, meaning that students would receive three months general

probation and no parental notification for the first offense. Under the policy at the time, violators were subject to five months specific probation and a university letter to their parents. The group's arguments were relatively simple. Alcohol contributes to a much greater extent of damage in the university setting, including violence, rape and alcohol poisoning, while marijuana has none of these effects and no known case of overdose exists. Further, there is no empirical evidence to support the gateway theory, a theory that proposes students who use marijuana will go on to try heroin or cocaine. Third, the state of North Carolina punishes the offenses equally. Finally, UNC Chapel Hill does not have parental notification for first time simple possession offenses involving marijuana, and that policy is positive because it promotes autonomy and individual growth of students as they transition to adulthood.<sup>203</sup>

University officials did not see it that way. Although they agreed that the state treats the crimes equally and alcohol is a more harmful drug, the opinion issued by Assistant University Attorney David Larry suggested that the solution lay not in reducing marijuana penalties but increasing those for alcohol. Fortunately, Interim Vice Chancellor Cindy Wallace has yet to adopt and implement that proposal, which is the exact opposite of what was requested by students. In light of lawsuits from parents whose children have died at colleges other than Appalachian, as well as a grizzly drug-related murder of an ASU student that led to bad press around the state for the school in the fall of 2005, the ACLU remains vigilant in trying to make sure that the university does not try to use the legislation as a pretext to adopt a policy directly opposed to the one promoted by the bill.



**2005-2006: An Increase in Informal Resolution Tactics for Civil Liberties Problems**

After the spring semester of 2005, Ian Mance graduated and Amanda Zeddy joined Paul Funderburk as a co-president of the American Civil Liberties Union of Appalachian State University. Unfortunately, violations of civil liberties would not wait until the start of the academic year. Over the summer an establishment clause issue arose that Funderburk tackled with the assistance of Faculty Advisor Dr. Andrew Koch. An individual came to the ACLU to report the violation and what she observed was not in accordance with lawful practice. The ASU Child Development Services, which is funded in part by the state, was engaging in all sorts of unconstitutional activity.

According to accounts from the complainant, the director of the facility had religious prayer books, framed Christian materials and magazines of a similar nature all around the center and her office. On a daily basis, teachers were reading the children prayer songs before lunch, playing Christian music before naptime, and getting the children to play with baby Jesus dolls. This activity was a clear violation of the religious rights of these students' parents, who clearly should have been instructing them about their religious faith rather than an educational director.

By this point, the ACLU chapter and Assistant University Attorney David Larry had developed a good working relationship. After informing him of the event, he was appreciative and sought to avoid legal liability for his client, the university. He offered to take care of the problem if the person who raised it came forward and made a statement. The individual did exactly that, and church/state issues have not been a problem at the facility ever since.

The next item on the agenda was the third annual *Busted* screening, scheduled for September 20, 2005. The event was the same as its preceding showings with two exceptions. For the first time the ACLU drew front-page coverage for the program in *The Appalachian*, providing great publicity for the group. Secondly, the promotional work basically consisted of posting flyers in public locations on campus, unlike the previous year's massive advertising campaign. The numbers were still strong despite the lack of publicity. Overall, 110 people watched the film.<sup>204</sup>

The third and final action of the semester involved the school's tunnel painting policy. Appalachian State has two tunnels that go under the campus's main road, Rivers Street, and students are allowed to spray paint on the tunnel walls and ceilings. It is not allowed on the floors, railing, walls leading outside of the tunnels or areas outside of the tunnels.<sup>205</sup> The circumstances surrounding the campaign were complicated. On October 18, 2005, *The Appalachian* ran an article entitled "Rugby Home Games Suspended." The following narrative was prominently featured in the article.

After the rugby team had painted the tunnels to advertise its Rucktoberfest competition, a group of students came through and painted a Bible verse on the other side of the tunnel and marked through the rugby advertisement with the same paint. In response, two rugby players retaliated by painting the "Top Ten Reasons Why Jesus Wouldn't Make a Good Rugby Player." Among them were "He's nailed upon the cross," and "The mother fucker is dead." At the bottom they wrote AHO to show that members of the team did it in response to the actions of the Christian group. After people read the remarks, numerous complaints were sent to the rugby president and Club Sports Coordinator Dave E. Hutchison. In the article, he was described as saying that the graffiti

was offensive and not desirable in the campus community, as well as that the team had to face the consequences of its poor decisions. The remarks were not quoted in the article; they were summarized and attributed to him.<sup>206</sup>

A week after the piece appeared, an editorial in the paper addressed the issue as well, calling the sanctions unconstitutional. ACLU Co-President Paul Funderburk then e-mailed Hutchison to seek clarification as to why the group was punished. He attributed it to three things, including “the inappropriate use of the tunnel walls.”<sup>207</sup> Believing the content of the anti-religious message to be one of the reasons for the sanction, Funderburk completed a bill regarding the issue that same day.

A meeting with Interim Vice Chancellor for Student Development Cindy Wallace seemed to support the view that the offensive statements were part of the reason for reprimand. When Amanda Zeddy and Funderburk met with her that week, she indicated that their initial concern was that the painting inside the tunnel was hate speech. After informing her that hate speech was constitutionally protected, they presented a thoroughly researched draft of the bill. Hoping to act quickly and revoke any sanctions given to the group for their expression, the bill was introduced three days later. ACLU member Autumn Furr, Vice President Clark Anderson and Corwyn Sergent were its sponsors.

After the proposal’s introduction, the Club Sports Council published a letter to the editor in *The Appalachian* saying that they supported free speech rights and inappropriate use of the tunnels referred to the location of other paint, which was outside the designated area. This statement did not seem to jive with the research of the bill. Funderburk had talked to the rugby president after the letter to the editor, and he said that painting outside



the tunnels was not mentioned until at least five days after the sanctions were levied.

Shortly thereafter, Club Sports took the same position to Funderburk. On the day of the Rules Committee screening in student government, the club sports coordinator sent an e-mail to Funderburk claiming that the punishment was not content related. This step was taken long after the initial contact from Funderburk, and its timing seemed suspect.

At the screening, the Rules Chair, a longtime opponent of the ACLU, prevented Funderburk from speaking on procedural grounds. The committee committed another disservice to free speech rights as well. Rules Committee members had contacted Hutchison to do their research but not the rugby team, leaving significant gaps in their understanding of the issue. Whether due to miscommunication between administrators and the ACLU, the lack of research by the committee or other actions, the bill received an unfavorable recommendation and had to be scrapped. It was a disappointing event, but the ACLU was determined to ensure that the policy was altered to protect constitutionally permissible expression nonetheless. The sponsors tabled the bill, scrapped the sections involving the rugby team, studied the research closely, and reintroduced it as a new piece of legislation.

The remaining sections of the measure called for the continued protection of anonymous speech in the tunnels and revision of the policy to establish a content-neutral standard of speech. Its authors took issue with the vagueness of the policy, which could allow protected discourse to be punished by the school based on the viewpoint conveyed. Examples included statements in its introduction that painters should “[p]lease be advised that should organizations or individual members create a problem through their actions, the group and individuals can both be held accountable through the University judicial

processes.”<sup>208</sup> It also warned students to “please be advised that various people utilize the tunnels to cross under Rivers Street. This includes students, faculty, visitors, children and numerous others. Please attempt to keep your comments and artwork appropriate for all users of the tunnels.”<sup>209</sup> Taken with the rule “[w]hen painting the tunnels, recognize that various individuals utilize the tunnels and try to make information appropriate to all,” the policy was disconcerting. The second time the bill was introduced there was little resistance. Only the bill’s sponsors visited the Rules Committee on this occasion, and the legislation received a general recommendation. It passed Student Government unanimously on November 29, 2005. Throughout the spring of 2006, the campus chapter continued lobbying the administration to make the reforms.

Two other issues drew the ACLU’s attention in the spring. The first came about when the Foundation for Individual Rights in Education (FIRE) published a report titled “The State of the First Amendment in the UNC System” in early January. In it, they listed a Housing and Residence Life Policy that prevented any form of harassment, including “abusive language, insults, taunts, or challenges directed toward another person.” The policy noted that bigotry would not be tolerated, even if it came from “ignorance, humor, anger, or [the influence of] alcohol”.<sup>210</sup> In short, they attempted to ban the expression of the idea that some people were not as good as others because of racial characteristics or sexual orientation, which is constitutionally protected discourse. After learning of the report from political blogs, ACLU President Paul Funderburk sent it to Assistant University Attorney David Larry expressing concern about the policy. He reviewed the report, existing case law, and determined that the policy did indeed infringe on students’ rights. It was repealed in late March.

The next activist campaign involved the longstanding problem of solicitation in the dorms. Christian groups have gone door-to-door in express violation of the solicitation policy in the *Housing and Residence Life Handbook*, which forbids door-to-door solicitation, for a number of years. Violators have apparently not been punished and the practice has prompted many student complaints to the ACLU. The chapter decided to take up the issue and Paul Funderburk and Clark Anderson worked together to draft a letter to administrators voicing concern. Administrators replied in early February, stating that the action violated the school's rules. Nevertheless, the ACLU continues to seek assurances that resident assistants will be better trained to enforce the policy.

The group also participated in two educational campaigns in the spring. It began its National Day of Appreciation for Abortion Providers tabling by toning the event down a bit and labeling the booth with a banner reading "reproductive rights." The new membership suggested the change as a way to influence more moderates on the issue. Otherwise, the event was the same as it had been in previous years. Finally, the ACLU of ASU held a large GLBT rights forum on April 5, 2006. The group posted flyers, sent out a mass mailing to all student post office boxes, sent out an e-mail to all faculty, got an Internet announcement posted on the school's Web site, took out an advertisement and announcement in the school newspaper, received a front page preview of the event and convinced some instructors to offer extra credit for attendance. Over 100 people showed up as a result of these efforts. The topics discussed included everyday instances of discrimination, hate crimes, domestic partner benefits, same-sex marriage, and gay adoption. After lively debate, those that attended learned much more about the issue. The ACLU had succeeded once again.



## **Chapter 4: A History of the American Civil Liberties Union of Duke University**

### **2003-2004: The Birth of a Chapter**

Duke undergraduate chapter founder Brian Schroeder spent most of the fall 2003 semester fulfilling procedural requirements to gain official club status at the school. He drafted a constitution, booked the meeting location and located a faculty advisor to sponsor the club. The advisor, Jeffery West, is a senior lecturing fellow in the department of Theater Studies. He has been a professional actor for 30 years, a teacher for 15 and co-created *The Night Before Christmas Carol*--a seventy-minute one-man show. Also sponsoring the Duke Racquetball Team and Duke University Improv (DUI), he was more than willing to help get the chapter off the ground.<sup>211</sup>

With all of the paperwork completed, the spring semester of 2004 brought a great deal of new activity. On February 23rd the group hosted a panel discussion on the Patriot Act and drew a number of reputable discussants for the event. ACLU of North Carolina Attorney Seth Jaffe, Duke Law Professor Christopher Schroeder and Assistant U.S. Attorney Jim Candelmo debated the merits of the law, raising awareness among the student body and contributing to a national dialogue about the legislation.<sup>212</sup> The fledgling chapter was able to increase its visibility through its work by tackling one of the organization's signature issues, but other issues still needed to be addressed as well.

The next educational campaign shifted the focus to the campus level. By screening *Busted: The Citizen's Guide to Surviving Police Encounters*, the chapter was able to do a

considerable service in informing students of their rights when stopped or questioned by the police. Narrated by former president of the ACLU Ira Glasser and produced by the Flex Your Rights Foundation, the film is a must see for anyone wishing to preserve his or her personal privacy during police encounters. Also contributing to the success of the campaign was the fact that the group was able to get speakers to discuss its content in relation to their localized experiences. Duke Judicial Affairs and Dean of Students Sue Wasiolek spoke about university-specific issues and took questions from the audience at the event. Overall, the students at Duke were well served by this comprehensive approach.

The final activity of the semester involved a bit of travel. On April 25, 2004, the National Organization for Women (NOW) staged the March for Women's Lives in Washington D.C. and the Duke ACLU was right in the mix. Focusing on issues of reproductive choice, women's health, family planning, access to safe and legal abortion and the plight of women's rights at the global level, over 1 million demonstrators showed up to voice their support.<sup>213</sup> Five members of the chapter were among them expressing an organizational commitment to defend women's constitutional liberty and sending a clear message in support of choice to an administration hostile to women's reproductive rights.<sup>214</sup>

### **2004-2005: A Year of Civil Liberties Education**

With the first full semester under its belt, the Duke chapter decided to branch out. The group created and distributed a civil liberties newsletter to every freshman dorm room in an effort to bring the Bill of Rights front-and-center in students' minds. It also decided to

host a much larger educational event at the university. Although their previous efforts had been successful, ratcheting up their on-campus presence would be beneficial for the group. In an effort to do so, they hosted a civil liberties week in late September of 2004. Included were a *Busted* screening, an educational event about marriage equality, “Ice Cream and Info with the ACLU,” and tabling. It was also timed in conjunction with the arrival of a major speaker on campus – Nadine Strossen.<sup>215</sup> The national president of the ACLU arrived to engage in a discussion about civil liberties on September 30th with Duke Professor of Law Erwin Chemerinsky, which provided the perfect centerpiece to the week.<sup>216</sup>

Although the chapter was not directly responsible for Nadine’s arrival, as it was co-sponsored by the Duke Law School student chapter of the American Constitution Society and the Program in Public Law, the visit was no doubt an important one to the group. The panelists’ credentials say it all. Strossen is a professor of law at New York University and has twice been named one of “America’s 100 Most Influential Lawyers” by the *National Law Journal*. Publishing more than 250 articles in scholarly and general interest publications, she was no doubt a wonderful complement to Dr. Chemerinsky – a scholar of national renown in his own right.<sup>217</sup> Named as one of “the top 20 legal thinkers in America” by *Legal Affairs* in April 2005, he has argued several constitutional cases before the Supreme Court and has published over 100 law review articles in publications such as *Harvard Law Review*, *Stanford Law Review* and *Yale Law Review*.<sup>218</sup> Their exchange was enlightening and inspiring for all those concerned with the state of civil liberties in America.



Seizing on the response to the event, the chapter screened Robert Greenwald's documentary *Unconstitutional: The War on Our Civil Liberties* – a no holds barred look at the massive infringements on the Bill of Rights in the post-September 11th environment – and organized a small fall trip to Washington D.C. to hear oral arguments at the Supreme Court. The following semester, they tabled at Springinternational, a large international festival highlighting ethnic diversity. For the last act of the semester, the group once again returned to the Supreme Court. Unlike last time, however, a pressing civil rights issue was being considered on this occasion.<sup>219</sup>

They could not have picked a much better day to sit in on the proceedings. In mid-April – the time the visit took place – the court was hearing arguments for a case called *Johnson v. California*. *Johnson* involved peremptory challenges on the basis of race – an extremely important civil rights concern. During jury selection, the prosecution used peremptory dismissals to exclude all remaining eligible African-American jurors before trying the black defendant. Unsettled by the turn of events, the defense had unsuccessfully challenged the exclusions on the basis that they were race-based. At issue was the process by which judges should determine whether or not an accusation is valid.

In *Batson v. Kentucky*, the Court had held that when alleging a racial bias in such challenges the defendant had to (1) establish a prima facie case of purposeful discrimination, then (2) the burden shifted to the prosecution to give reasons other than race for exclusion, and finally, (3) the defendant had to show that these facts raised an inference of exclusion on the basis of race. Under California law at the time, however, the defense was initially required to show that discrimination was more likely than not without the second and third steps in the process. As a result, the court struck down the

California rule, calling it an “inappropriate yardstick by which to measure the sufficiency of a prima facie case” and noted that “[s]election procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.”<sup>220</sup> It was a victory for civil libertarians everywhere, especially those from Duke who witnessed the proceedings.

### **2005-2006: Duke Incorporates an Activist Component**

The previous semester had seen a slight decline in activity with the club president readying himself for law school and finding it difficult to engage a largely apathetic campus – particularly in the midst of the NCAA college basketball tournament.<sup>221</sup> After his departure to Harvard Law, however, Daniel Bowes took over as leader of the chapter and they began a very productive year. The first major action by the group was an activism campaign, an event that had been untried in chapter history. The issue came up early in the semester when Alcohol Law Enforcement (ALE) officers visited a party at the school and engaged in an illegal search and seizure of those attending it. The ALE blocked the entrance and exit to the gathering and would not permit participants to leave without submitting to a breathalyzer test. Hearing about the event, the ACLU sprung into action. They collected complaints from students during the entire month of September, helped defendants find legal counsel, met with the ALE supervisor, and referred the student complaints to Student Affairs and the state ACLU office. Their efforts proved to be a tremendous success. Of the 200 people at the party, 125 pled not guilty and had their cases dismissed due to the officers’ actions. The ALE also stopped coming to

student parties the very next week. Duke's ACLU chapter had made it clear that students' rights would not be violated on their watch.

They also continued educational efforts as well, with the first focusing on reproductive rights. On September 13, 2005, the group articulated the constitutional basis for a woman's right to choose at their chapter meeting and invited the director of patient services for Planned Parenthood of Central North Carolina to discuss the implication of the *Roe* decision for students on campus.<sup>222</sup> It was a very successful talk. By incorporating an individual's role in relation to a national political struggle in addition to how the outcome relates to them on a personal basis, the chapter demonstrated that issues of reproductive choice go well beyond abstract discussion.

The next major event was a repeat of those in years past. On September 20th the group held their third annual *Busted* screening, encouraging students to report ALE violations and raising awareness about their rights in police encounters. The Duke Chief of Police and Dean of Students also came to answer questions posed by attendees. Fifty students came to the event – a considerable amount given that the film had been shown two years in a row.<sup>223</sup> After the screening it was becoming clear that the group had done about all it could in regard to search and seizure rights for the semester, so they decided to address another hot-button issue on campus, academic freedom.

In recent years, faculty ideology – particularly the prevalence of liberal faculty in the social sciences – has been called into question at many universities, including Duke, and there has been a movement among conservative students to take it into account in job hiring, usually through measures referred to as a student bill of rights. According to their point of view, the university would benefit from ideological diversity and such diversity



might also lead to increased impartiality in grading for conservatives – both student rights. Opponents of the proposal often counter that ideology is a less important indicator of a faculty member's worth than other merit-based standards, including the number and prestige of scholarly publications, job experience, recognition in the field and other measures. They also express reservation at the notion that personal beliefs should become a major determinant for job hiring because it infringes upon the rights of faculty to hold and express certain views, particularly when they are consistent with academic scholarship and provide critical analysis of scholarly findings. In other words, opponents feel that such a proposal could result in the hiring of less qualified teachers, limit faculty expression of their First Amendment rights, and strip students of the critical analysis component of scholarly research. On October 28th the ACLU decided to let students make up their own minds by hosting a panel debate on the subject and incorporated a wide diversity of viewpoints in the event. Included were Duke Professor Michael Hardt, the author of *Empire*; John K. Wilson, who penned *The Myth of Political Correctness: The Conservative Attack on Higher Education*; Joey Stansbury, a representative of the conservative John William Pope Center for Higher Education Policy; and Stephen Miller, president of the student chapter of Students for Academic Freedom – a group currently working toward the implementation of an academic bill of rights at Duke. The discussion was lively and attendees were very pleased with the spirited debate.

As the semester progressed, one final issue jumped on the chapter's radar. With the proliferation of Supreme Court appointments from the Bush administration, group members were beginning to grow concerned about these appointments' impact on civil liberties in America. As a result, the chapter organized a forum about that topic as well.

On November 1st they hosted “Judgment of the Times,” which featured discussion from Duke professors Neil Siegel, Jed Purdy, Jefferson Powell and Erwin Chemerinsky.<sup>224</sup> Apparently the ACLU was not the only group of students concerned about the development; over 100 people showed up at the talk.<sup>225</sup> It was becoming clear that the group was growing much more adept at choosing topics to engage the campus and hosting successful educational events.

Although the fall semester had been the most productive on record, the chapter showed no signs of slowing down in the spring. With the celebration of Dr. Martin Luther King’s birthday, the group found another perfect opportunity to bring the ACLU front and center once again. The legacy of Dr. King is extremely important for civil rights advocates and civil libertarians, but with the generation gap between the participants in the movement and the current generation, it is often hard to know exactly how to follow up on his work. In an effort to begin that dialogue, the ACLU hosted a discussion called “In Search of a Dream” on January 16th, where current and former activists could come together and exchange views on the subject. At least one participant found the event inspirational; the vice president of the club went on to reestablish the campus chapter of the National Association for the Advancement of Colored People (NAACP).

The group also wanted to raise awareness about flaws in the death penalty early in the spring semester. Using a new tactic, they drew chalk outlines of the 121 people who have been exonerated from death row all over the main campus, including their names and the amount of time they had spent in prison. Whether Duke students wanted to or not, they were forced to confront an awareness of flaws in the death penalty. Because of

the campaign, they learned a great deal in the process as a result. Since the group was becoming an increasingly well-established chapter, they began to step up and aid other college chapters as well. In conjunction with planning by the state chapter's youth outreach coordinator, Tamara Snell, they hosted the Third Annual ACLU of North Carolina Youth Summit in mid-February. Jennifer Rudinger, the executive director of the North Carolina affiliate, and Dr. Chemerinsky were the featured speakers at the event. Overall, around 25 delegates from the different schools participated, shared experiences, and left with a heightened sensitivity to civil liberties problems facing college campuses across the state in addition to a number of new ideas for action in how to confront them.

In a flurry of activity, the group began another activism campaign while these events were taking place. Taking the fight to the campus level, the chapter started to address the Patriot Act's impact on members of the Duke community. They conducted research, drafted legislation for student government to consider, and met with the dean of students on multiple occasions to discuss their proposed remedies. They addressed privacy rights of library patrons, university bookstore customers, and student groups. They also addressed confidentiality of school records, restrictions on the ability of faculty and students to travel internationally, academic freedom and university participation in Joint Terrorism Task Forces (JTTFs). Virtually everything, with the exception of the last topic, was preserved in the bill that eventually passed through the student legislature.

The measure stipulated that the school library provide immediate notice to anyone whose records have been requested or examined by law enforcement officials unless prohibited by statute or court order. It further called for posting signs in the library, public computer labs, and university business entities informing individuals of their rights



under the law. It requested that the library destroy records of book borrowing and Internet use on a regular basis. And it also called for the administration to request information from the federal government about the number of faculty, staff and students detained in a terrorism investigation, the frequency of search warrants executed under section 213 of the law on campus, the extent of electronic surveillance and surveillance of student meetings, the number of times educational records and records of library, Internet and business transactions have been obtained, how frequently students and faculty have been unable to enter the United States due to denial of visas, and the frequency of suppression of academic publications due to government pressure. According to the bill, all of these records are to be provided to student government on at least a semesterly basis.<sup>226</sup>

Recent history suggests that the administration may be open to this proposal. By early April, the library had decided to adopt the measures involving sign posting at computers and in a prominent place informing patrons of their rights, as well as agreeing to delete their records on a regular basis. As of the middle of the month, they were negotiating sign wording with the ACLU. Although the rest of the proposal has yet to be adopted, there is cause for optimism in those areas as well. Talks with the dean of students were very productive until the lacrosse scandal hit the campus and occupied administrative attention. If their efforts succeed, Duke may serve as a model for combating the worst provisions of the Patriot Act at colleges across the country.<sup>227</sup>

The last two activities of the semester were both educational. The group worked with student government to develop and distribute 1000 cards informing students of their rights in on- and off-campus situations, including contact information of bail bondsmen

and attorneys. They hosted an educational event on same-sex marriage as well. They also were adopted to serve as a test case for a leadership class's program that sought professors and influential speakers to come and speak to student groups about personal experiences regarding their area of interest.<sup>228</sup> With the spring semester nearing an end, Duke's chapter of the ACLU had become a college leader in defending civil liberties for the state of North Carolina.



## **Chapter 5: A History of the American Civil Liberties Union at North Carolina State University**

### **1996-1999: The Early Years**

The American Civil Liberties Union at North Carolina State University was founded by Kevin Pelphrey and Jeff Neiman and received official approval as a recognized campus organization in the fall of 1996.<sup>229</sup> Unfortunately, little is known about the early years of the club, but what follows is an account of recorded actions during the period. It can only be assumed that much of the chapter's focus in the fall of 1996 centered on recruiting and sustaining an active membership base. No information could be gleaned about its success in doing so or any resulting activities in the spring semester, however.

By the fall of 1997 Michael Eckhoff had been elected as chapter president and the group's first meeting was held on Wednesday, October 29th. Apparently lacking substantial membership, much of its energy was devoted to reorganization and membership recruitment yet again.<sup>230</sup> By the spring semester, their infrastructure development was a success. During the third week of March, which had been declared Human Rights Week at N.C. State, the group participated in the event by holding a campus discussion on the death penalty.<sup>231</sup> Unbeknownst to them, a new generation of activists would follow their lead several years later and build upon these efforts.

Eckhoff was still president of the chapter during the 1998-1999 academic year,<sup>232</sup> and unfortunately, little record exists of their activities in this period as well. What is



clear is that the school held an enormous Human Rights Week celebration March 21st-26th of 1999 and the ACLU of North Carolina participated in the event. It could be inferred that the N.C. State chapter might have had something to do with its involvement, but records confirming this conclusion are lacking. Either way, ACLU of North Carolina Executive Director Deborah Ross lectured about the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and other speakers, ranging from Andrew Sullivan – the former editor of *The New Republic* and prominent gay Republican activist – to representatives from People of Faith Against the Death Penalty (PFADP) also participated in the campaign.<sup>233</sup>

### **1999-2002: The Chapter Lull**

Although it is clear that the chapter ceased to exist by the fall of 2002,<sup>234</sup> no information could be located on its activities during the 1999-2000, 2000-2001 and 2001-2002 academic years. One major event during the period warrants mention, though. On November 8, 2000, ACLU President Nadine Strossen – leader of the national ACLU – spoke on campus at 1 p.m. and discussed “Civil Liberties after the Elections.” She also attended the Finlator Dinner at 6:30 that night at the N.C. State University Club.<sup>235</sup> Her appearance, like many others, drew civil liberties advocates from all around the state and invigorated those activists as well.

### **2002-2003: The Group Forms Again**

Although the ACLU of N.C. state had ceased to exist in earlier years, a new group of students spearheaded its reemergence in the fall semester of 2002. The group restored

official club status at the school and secured \$250 in start up funds from the university. They actively developed infrastructure by posting flyers on campus and talking to students about the group, as well as by passing out educational materials provided by the state affiliate at their meetings. Unfortunately, they ran in to some difficulties early that year – evidenced by the fact that they only had about six active members. Many students knew little about the organization, and among those that had some knowledge, their views were often negative because of the organization's previous actions to defend hate speech.<sup>236</sup>

Nevertheless, the chapter made some progress in making their presence known on campus. During the spring semester of 2003 under the leadership of President Tonya Brown, the new group held its first major educational event. Focusing mainly on the Patriot Act, the group successfully recruited ACLU of North Carolina Executive Director Patricia L.T. Camp, Scott Tillman from Duke Law, and a previous dean of UNC's law school to speak at the April 16th event. To publicize it, they posted flyers all across campus, advertised it on classroom chalkboards, solicited professors from the Department of Political Science to offer extra credit for attendance, had the event listed on the academic calendar, and benefited greatly when the school honors association listed it as an event that would count toward honors requirements for students in the program. The efforts paid off: almost 200 people came to the event and were treated to a lively discussion about the law.<sup>237</sup>

### **2003-2004: The Chapter Begins to Find Its Voice**

As the North Carolina State University (NCSU) chapter of the ACLU approached a new year, it was clear they were still finding their voice as an organization. Only two

major events took place in the fall semester as a result. On September 6, 2003, Attorney General John Ashcroft was speaking at the Sheraton Imperial Hotel in Durham, NC as part of his nationwide tour to promote the USA PATRIOT Act, and group members, along with others, wanted to make sure the public knew that everyone did not support all aspects of the law. The N.C. State ACLU, joining with the North Carolina ACLU, the Wake County chapter, MoveOn.org, Peace Parasols, the Bill of Rights Defense Committee and Peace Action stood outside the building with signs to demonstrate that fact. From 9 a.m. to 1 p.m., the group of over 450 people picketed, with other civil liberties activists circling the streets in a blue truck painted with freedom slogans as a show of support. In the end, the message was loud and clear.<sup>238</sup>

With one major event under its belt, new leadership within the club – particularly Gene Feldman – started to impact the direction of its activities by the latter half of the fall semester. Since the USA PATRIOT Act occupied a large share of the ACLU's agenda nationally, Feldman wanted to take the effort forward at the campus level as well. As a result, he reached out and convinced a friend in Student Government (SG) to introduce a resolution condemning the most offensive provisions of the law. He also helped draft the bill, which called for supporting a pro-civil liberties resolution that had been introduced in the local city council.<sup>239</sup>

The chapter membership responded by rallying in support of the cause. After an extensive tabling campaign and testimony before the floor by the ACLU at N.C. State, the legislation passed easily a semester later.<sup>240</sup> The battle itself, on the other hand, was just beginning. Although the SG was receptive to the notion, the Raleigh City Council turned out to be a tougher fight; the ACLU at N.C. State could not shoulder the burden



alone. Joining with the ACLU of Wake County, which was also heavily involved in the effort, as well as a coalition of other groups, they were finally able to achieve their task. After promoting a Wake County ACLU online petition in support of the measure,<sup>241</sup> as well as attending numerous city council meetings,<sup>242</sup> the ordinance passed on June 15, 2004.<sup>243</sup> The group's work had not been in vain.

In the meantime, the ACLU at N.C. State had been hard at work on other important issues as well. The moratorium campaign was a highly visible one in the state, and the group also wanted to aid in that effort. Noting the immense problems associated with the application of the death penalty including racial and class biases, arbitrariness, and capriciousness, the chapter decided to raise awareness about those facts on campus. Setting up tables in the Brickyard, they passed out information about the movement and organized a clemency rally for George Page who was sentenced to die in April of 1996. The students used donated cell phone minutes to allow participants to phone the governor and ask for a stay of execution, making fifty-one phone calls over the three-day event. Fortunately, they had some success. On February 25, 2004 Forsyth Superior Court Judge Catherine Eagles and U.S. District Judge Terrence Boyle ordered a stay of execution for Page.<sup>244</sup>

After the event, the group – particularly its vice-president, Gene Feldman – wanted to do more to reach out to other college chapters around North Carolina. Since high school, Gene had been a close friend with Appalachian State University Co-President Paul Funderburk, and over breaks they often discussed activities at their respective chapters. Feldman helped to bring the N.C. State group along a model similar to that of Appalachian State ACLU, and understood the power of college chapters around the state

joining together to share tactics and ideas. As a result, he took two major steps that semester to bring the chapters together. Feldman started out by creating a group e-mail list where student chapters could share their campaigns and correspond with each other easily. Secondly, he started working with James Riley of UNC Chapel Hill's ACLU undergraduate group to set up the First Annual ACLU of North Carolina Youth Summit, which was held later in the semester at UNC. The summit – although poorly publicized and sparsely attended – provided the first foundations for an event that would grow in size and scope over the next few years.<sup>245</sup> In many ways, Feldman made a major contribution to the ACLU of North Carolina as a visionary for its college program through those efforts.

The ACLU at N.C. State reached out to other college groups as well. Led by Yasmin Farahi, they worked with the N.C. State chapters of NARAL and the National Organization for Women (NOW) to recruit students to attend the March for Women's Lives in Washington, D.C. Spreading the word all around campus, the coalition helped secure bus transportation for over fifty people, including several ACLU members. In the end, it turned out to be a wonderful success.<sup>246</sup> Thanks to the hard work across the country from groups like the ACLU at N.C. State, over one million people attended the march.<sup>247</sup>

The final event of significance happened on April 1st. ACLU National President Nadine Strossen came to campus to speak about a topic important to civil libertarians everywhere, the Patriot Act.<sup>248</sup> Although the N.C. State chapter had long been acquainted with the fight, her presence provided a lift. When she urged students to stand up and speak out against civil rights violations, it validated their efforts and renewed their

sense of purpose. The same can be said for others in attendance as well; the event was truly an enriching one.

### **2004-2005: An Emerging Force on Campus**

By the fall semester of 2004, Gene Feldman had assumed the presidency of the chapter, and he immediately embarked on an effort to increase the group's presence at NCSU. In light of the importance of the moratorium movement in the state and their success in hosting successful campaigns to raise awareness about it in the past, the group decided to host a large event about the issue to create campus dialogue and bring more people into the struggle. They invited Alan Gell, who had become a leading public figure in the movement after being exonerated and freed from death row in North Carolina, to speak at the event. He accepted and the chapter highly publicized the September speech. It turned out to be a tremendous success. One hundred and eighty people showed up to the discussion, and many of those in attendance undoubtedly were substantially impacted by his story.<sup>249</sup> In an unfortunate side note, however, Alan Gell was indicted in 2006 on multiple charges of statutory rape.<sup>250</sup> It is unclear how his alleged actions have impacted the statewide push for a moratorium, but as a public figure in support of it, the apparent lack of self control he displayed may very well make it harder to save those whom he has tried to protect since his release from prison.

The N.C. State chapter also engaged in a number of other successful campaigns throughout the fall semester. They replicated their past actions and tabled for the moratorium movement on campus, organizing phone calls for clemency yet again. The group focused on the upcoming presidential elections as well, engaging the campus



through two major events. First, although partisan groups were highly involved in voter registration, the ACLU stepped into the fray and tabled on campus, registering voters in a non-partisan fashion. Secondly, they coordinated with a number of campus groups to raise awareness about important election issues. In a five-day event hosted by the Progressive Coalition of North Carolina State University (PCNCSU) – an umbrella group designed to link numerous left-leaning campus organizations<sup>251</sup> – they brought ACLU of North Carolina Executive Director Jennifer Rudinger to campus to discuss the Patriot Act. As part of the activities, her speech, among others, was aired numerous times on the N.C. State television channel and broadcasted into dorms across the school.<sup>252</sup>

The next event of the semester, however, was probably the most exciting. Before the 2004 presidential election, the Republican Party's state office was vandalized, and much to the chagrin of the N.C. State chapter, the Federal Bureau of Investigation (FBI), which was heading up the case, began to direct its inquiries toward members of left-leaning political groups on campus. According to accounts the group received from activists, the FBI began to show up at their homes to question them and began monitoring their political protest activities as well. Peaceful demonstrations such as "Honk for Peace" and "Food Not Bombs" featured law enforcement following students and subjecting them to harassment and questioning. Looking back at the history of the FBI's activities in the 1960's and 1970's, this development did not sit well with the chapter. They quickly compiled accounts of the activities and referred them to the ACLU of North Carolina, which followed up by filing a Freedom of Information Act (FOIA) request to see whether the individuals protesting were targeted solely based on membership in liberal political organizations or actual evidence of criminal wrongdoing. Although the legal process is

still ongoing, it was a major and effective step taken by the students from the N.C. State ACLU.<sup>253</sup>

The final action taken by the group was educational. Toward the end of each semester, many N.C. State students take part in an event known as the Hillsborough Hike. Moving down the main campus thoroughfare – Hillsborough Street – they stop from bar to bar and drink to their heart's content. Unfortunately, the activity is not all fun and games for many of them. Numerous participants are greeted with tickets from the police for carrying open containers on the streets. The N.C. State chapter, hoping to reverse that trend, set out to raise awareness about the regulations. They posted flyers all over campus and on the street itself letting students know that open containers are strictly forbidden.<sup>254</sup> In the end, their efforts undoubtedly helped numerous participants comply with the rules and avoid one of the nasty consequences of binge drinking.

In the spring semester the club devoted a lot of its energy preparing for and hosting the Second Annual ACLU of North Carolina Youth Summit. They raised money through bake sales, reserved the meeting location and booked speakers to talk at the event. The guests were familiar ones: Alan Gell and an outreach coordinator for the North Carolina Coalition for a Moratorium (NCCM). To their credit, the group learned lessons from the previous year's event and this one was much more successful. Representatives from chapters at Appalachian State, Duke, N.C. State and North Carolina Central Law School all attended. They discussed the moratorium movement, shared ideas about chapter activities, and left ready to put those lessons into practice.<sup>255</sup> The N.C. State ACLU was no exception. Following a campaign hosted by the ACLU of Appalachian State University, they joined with the campus chapter of NOW and began to participate in the

National Day of Appreciation for Abortion Providers. The groups tabled on campus, passed out information, and sent thank you letters to their local Planned Parenthood office.<sup>256</sup>

Although the chapter already had some major accomplishments under its belt, they had one more significant activity left in them for the spring semester. Unaware of the intricacies of the First Amendment, a student in the College of Veterinary Medicine filed a complaint on the ACLU of N.C. State's Web site regarding bible distribution outside the school that had been permitted by the university. The group responsible for the event – Gideon's International – had obtained permission from the Center for Student Leadership, Ethics, and Public Service (CSLEPS) and it was announced over the school's e-mail system. The N.C. State ACLU quickly sprung into action, discussing the complaint with the CSLEPS via e-mail and ACLU of North Carolina Staff Attorney Shelagh R. Kenney. As a result of those talks, they discovered that the distribution was legal as long as it was conducted on a content-neutral basis. The school did err in allowing an e-mail announcement, however, because it did not provide the same service for other groups. After conveying the law to the aggrieved student, she decided to let the incident pass and focus on her studies, but the campaign was very productive nonetheless. The N.C. State chapter got a lesson in the establishment clause and helped respond to concerns from the campus community once again.<sup>257</sup>



### **2005-2006: The Group Reaches Maturity**

Yasmin Farahi became president of the chapter in fall of 2005 and the group immediately set out to locate new members. Under her leadership, they embarked on the largest recruitment effort to date by taking a number of actions to inform the student body about the organization. Throughout the summer, the chapter set up contact tables at orientation fairs to target incoming freshmen, which to their dismay, grew greater interest from parents than students. They tabled on the Brickyard for the first few weeks of school as well, distributing information and selling T-shirts to raise funds. The group also participated in the campus club fair, which was open to all recognized organizations. They even had a professor encourage his students to check out the group.<sup>258</sup>

In the end it paid off. Approximately twenty people attended their first meeting – more than double the number of regular attendees in previous years. Unfortunately, most of those new recruits dropped out by the spring semester. Nevertheless, one of them brought to light the first issue the group would address that fall. The university was allowing Christian organizations to use campus buses to attend church functions and it raised concerns about a potential separation of church and state conflict. The group immediately responded. They researched school policies surrounding the practice and found that the school allows any campus group to use the equipment for a fee, regardless of their views. Applying the lessons learned in the bible distribution issue, they quickly concluded that the university was in fact complying with the law.<sup>259</sup>

The next problem to come to the attention of the chapter involved free speech rights. The campus Green Party arranged for Cindy Sheehan – prominent anti-war critic and

mother of a fallen soldier in Iraq – to come speak on campus. Needless to say, her presence was controversial. As a result, the administration set up separate free speech zones on opposite sides of the Brickyard for her supporters and opponents, but the latter group did not follow the regulations and stay in their designated area. As Cindy arrived on campus they rushed her bus, and throughout the speech they shouted over her and did not permit her message to be clearly heard by others.<sup>260</sup>

Gene Feldman, the former president of the ACLU chapter, realized that her opponents were violating university guidelines and approached the police present at the event for assistance. Much to his surprise, though, the officers did nothing. They even claimed that intervention would infringe on the opposing students' freedom of speech – a view not born out by existing constitutional precedent. After the event, Feldman sought to confront the violation of the Greens' rights and met with supporters of Sheehan – gathering their individual stories – and university professors to discuss a response. Unfortunately, there was disagreement between the groups and no response ensued save a letter from the Progressive Coalition to the campus police.<sup>261</sup> Regrettably, the factionalism ensured that the students' rights remained undefended.

Turning their attention elsewhere, the ACLU at N.C. State began a major educational campaign. Joining with the Muslim Student Association (MSA) and the Middle East and North African Student Association (MENASA), they began to screen episodes of the ACLU Freedom Files on campus. In total, they screened three episodes and advertised the events with flyers, tabling, and announcements on the groups' listservs. The attendance was fairly substantial. The first two screenings averaged around twenty-five people, while the third was closer to fifteen. In the last case, the turnout was hampered

because the event was held near the end of the semester and many students were very busy with schoolwork at the time. As a final educational campaign, the group conducted more clemency calls after tabling as well.<sup>262</sup>

The campus chapter also embarked on two other major activism campaigns in the fall semester. Responding to complaints received from their Web site, they began to investigate instances in which students had been prosecuted for violating university regulations based on pictures found on the Internet. As with many other schools, campus officials had begun to look at popular sites like Facebook.com and Myspace.com – both social networking tools – to find photographic evidence of students drinking underage or being surrounded with drugs and/or drug paraphernalia. The development quickly brought the ACLU into the spotlight, including requests for statements from the campus newspaper, *The Technician*. Other groups were exposed to the chapter as well. They met with the administration, campus police, housing, and Student Government to discuss the issue. In the end, however, they concluded that nothing could be done. With the evidence in the public domain and students advertising illicit behavior, it was hard to make a legal case for a reasonable expectation of privacy.<sup>263</sup>

In a campaign inspired by the activities of the ACLU of ASU, the ACLU at N.C. State, led by their president's efforts, began to push for domestic partner benefits in the fall. Ms. Farahi researched the school's policies on granting benefits to same-sex couples and consulted with administrators and the chair of Faculty Senate. The findings were disconcerting. The school allowed some benefits, such as gym and library access, but created a lot of red tape for those who wished to obtain them. In many cases, separate forms were required for access to these functions and neither the benefits nor the process



was publicized. Further, Faculty Senate was unwilling to address the issue. They had formed a task force in 1997 that concluded that nothing could be done, and many members felt that the current situation was unchanged. Reaching an impasse, Yasmin decided that the best course of action would be to post her research on the chapter Web site by placing the information in one easy location for faculty. Although not accomplished yet due to turnover in web development duties, this undertaking remains a priority for the group in the upcoming year.<sup>264</sup>

The spring semester started off with a bang after a university task force issued new recommendations for safety at student football games and they were reported in the campus newspaper. The guidelines, which included mandatory pat-downs of all students, but not guests entering Vaughn Towers to see the games, raised serious concerns among chapter members that the school might be overstepping its authority and violating students' search and seizure rights. Consequently, they began to investigate policies at other public venues, most notably the RBC Center in Raleigh, and researched existing constitutional law on the subject. Based on their findings, they believed that the policy jeopardized the equal protection guarantees of the Constitution because it subjected students to pat-downs but neglected to do the same to alumni who largely entered Carter-Finley Stadium through Vaughn Towers. They were also concerned about the potential for profiling or legal challenges from attendees that were searched without suspicion or felt that the search was inappropriately performed.<sup>265</sup>

As a result, they decided to convey the concerns to the administration, and after running the letter by the state affiliate and consulting with a law professor on the board of directors, they e-mailed the school to discuss the issue. Although they realized that safety

was a legitimate concern and voiced that belief repeatedly in their correspondence, the group requested further discussion to ensure that civil liberties and campus safety would both be protected. After the chapter received a reply from the school's general counsel, they responded once again by highlighting important case precedents and other relevant information.<sup>266</sup> As of this writing, the recommendation for pat-downs has been tabled by the chancellor. Their efforts have been successful.<sup>267</sup>

Most of the rest of the spring activities were education oriented. After the Third Annual ACLU of North Carolina Youth Summit, the group chalked outlines of executed prisoners on campus, taking a page from the Duke undergraduate chapter. They participated in the National Day of Appreciation for Abortion Providers yet again, using the same tactics as the previous year. They also co-hosted a screening of *Busted: The Citizen's Guide to Surviving Police Encounters* with the Society of Politics, Economics and Law (SPEL) and advertised the event through listservs, tabling and fliers. All of the projects turned out to be successful, with the last drawing approximately fifty attendees and featuring an attorney from University Student Legal Services to field questions. Bustcards were offered that explained search and seizure rights for anyone that wanted them as well.<sup>268</sup>

The final educational campaign to take place in the spring took place on April 20th. The group co-hosted a panel discussion with the Wake County ACLU – called “Intelligent Design vs. Evolution” – on the intelligent design controversy. The publicity drive was immense. The campus chapter tabled, sent out messages on their listserv, got other campus groups to do the same, posted sandwich boards on campus and advertised on a popular university message board to raise awareness about the forum. They also had

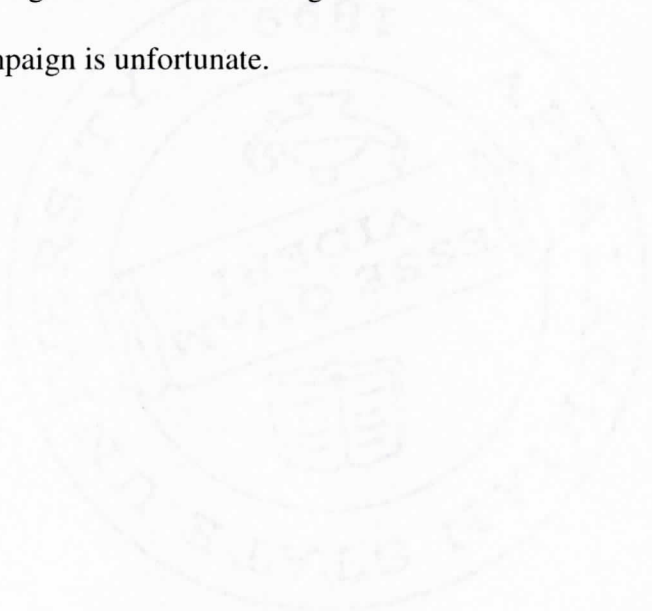
the foresight to get the event co-sponsored by the philosophy department as well, allowing attendance to count toward requirements for the university's scholars program. In the end, it even received coverage in the *Raleigh News & Observer*.<sup>269</sup> They selected experts from both sides of the debate to speak at the event which included Dr. Douglas Jesseph, Professor of Philosophy at N.C. State; Dr. Robert Hambourger, Associate Professor of Philosophy at the school; John G. Gray, Jr., a PhD in Physiology who was employed in the private sector and Dr. C. Gerald Van Dyke, a professor of Botany at NCSU. The format included opening remarks and rebuttals, followed by a question and answer section.<sup>270</sup> By all accounts, it was a grand success. Almost 200 people came to the event.

One activity completely failed, however, and has been a major source of frustration for the group over the past few years. It involved opposition to the Nuisance Party Ordinance (NPO) in Raleigh. The ordinance, passed by the city council, prohibits a number of behaviors in city limits. Some of them unquestionably deserve prohibition, such as littering or public urination. Other forbidden actions are more questionable. Particularly included in this class is "any activity ... that annoy[s] neighboring residents" or "endanger[s]" their "comfort."<sup>271</sup>

The measure also punishes potentially large numbers of individuals. According to the legislation, "any person .... having any possessory control of any degree of any premises" where these activities take place "may be punished by any of the criminal or civil enforcement penalties available to municipalities." Also, "[a]ny person attending a nuisance party is also in violation of this section."<sup>272</sup> Discussing the ordinance since the first year the group reformed, the ACLU at N.C. State has long believed this ordinance to



be unconstitutional because it prohibits certain protected First Amendment activities and violates Fourteenth Amendment due process protections.<sup>273</sup> Over the years, they have tried to raise awareness about it on campus, gather stories highlighting police abuse of the measure, and even met with University Student Legal Services to try to get the group to challenge the ordinance. In the 2005-2006 academic year, the chapter tried to get Raleigh City Council Members to come to campus and discuss the ordinance and listen to student concerns. They were unsuccessful in confirming the guests, however, just as they have been in securing legal counsel to challenge the law.<sup>274</sup> The level of difficulty they have faced in this campaign is unfortunate.



## Chapter 6: A History of the ACLU of the University of North Carolina at Asheville

### 2005-2006: The Chapter Gets Active

Although the UNC-Asheville chapter of the ACLU was founded in the fall semester of 2004, it did not get active until a year later. As with most ACLU college chapters, its initial energy was placed in educational endeavors, and the USA PATRIOT Act was the first topic on the agenda in 2005. The group screened “Beyond the Patriot Act” – an episode of the *ACLU Freedom Files* – and a brief documentary highlighting the history of the ACLU. The *Freedom Files*, in its inaugural season, are part of an ACLU public education campaign to describe civil liberties issues confronted by everyday individuals, their decisions to stand up for their rights, the difference made for themselves and others as a result of their actions and the principles involved in the conflicts. Robert Greenwald, director of *Outfoxed* and *Unconstitutional*, has teamed up with the organization to produce the series which is being shown on *Court TV* and *Link TV*.<sup>275</sup> As with the national distribution effort, the local screening was also a success. In addition to creating an audience of interested students, the UNCA chapter learned valuable lessons that would aid them in publicizing future events.<sup>276</sup>

That experience paid massive dividends later in the semester when the group hosted an immensely successful panel discussion about students’ rights. Instead of screening a film, as they had in their past campaign, the chapter used the event as a way to reach out and make connections with local figures important to their work.

Participants included a defense attorney from the Asheville area, the university attorney, and ACLU of North Carolina Executive Director Jennifer Rudinger. Their clout, in conjunction with campus publicity, apparently induced a fair number of students to attend. Over fifty students went to the discussion. The room was pushed over capacity, and the attendees were treated to a healthy debate over free speech zones and students' rights in search and seizure situations. The question and answer session afterwards was perhaps the most important aspect, however, as students raised specific situations in which their rights had been violated. The descriptions included complaints about campus police officers sticking coat hangers under dorm room doors to search for towels – assuming their presence to be evidence of marijuana use and hence a pretext for entry – and unlocking and entering doors where students refused to grant them admission.<sup>277</sup>

Their startling comments sparked a whole new line of activity for the group and prompted it to begin its first activist campaign. The ACLU of UNCA, seeing a clear need to do so, began to post educational information about search and seizure situations and disseminated the materials by hand as well. They also met with representatives from Housing and Residence Life – the administrative agency tasked with dorm supervision – and the university attorney to discuss the problem. Unfortunately, the official response was not as favorable as the group had hoped. The university attorney held that students were not subject to normal legal protections when their cases were referred to the Office of Student Conduct and not handled through criminal proceedings. Unhappy with the university attorney's position, the group began to research school policies on dorm room and campus searches and seizures, the legal validity of the university attorney's assertion, and continued to educate students about their rights. In fact, they planned to create a



campus “Bustcard” to inform students of their legal protections in such encounters and distribute it in the 2006-2007 academic year.<sup>278</sup>

In addition to the ongoing campaign concerning search and seizure rights, the chapter branched out into other activities in the spring of 2006 as well. They first came to the defense of lesbian and gay rights. Responding to a local report of a lesbian woman being fired at the nearby Wolf Laurel Ski Resort due to her sexual orientation, the group investigated the circumstances surrounding her dismissal in an effort to mount a measured response. To their dismay, the initial reports turned out to be slightly misleading. The person in question was not actually employed by the company; she was merely granted access to the club for the purpose of taking photographs of guests for profit. That finding notwithstanding, the group wanted to make sure that their university did not financially support firing people on the basis of sexual orientation and took action to ensure that end. After talking with UNCA Campus Recreation, however, the chapter determined that the university did not have a financial relationship with the resort, rendering moot any need to convince the administration to boycott it. Reaching a dead end, the group dropped the effort.<sup>279</sup> Although their actions were limited, the existing school policy and the group effort itself was an indication of the affiliate’s development in reaching out into local affairs.

After attending the Third Annual ACLU of North Carolina Youth Summit at Duke University in mid-February, the group came back energized and ready to put their newfound knowledge to work. Their first action borrowed on a campaign from the ACLU of Duke University. Like the Duke affiliate, the ACLU of UNCA, joining with the campus chapter of Amnesty International, sketched 121 chalk outlines around

common areas on campus to highlight the number of people exonerated from death row due to errors concerning their cases. The March 2nd event was an amazing success. The group drew its first publicity in their campus newspaper – *The Blue Banner* – giving them a platform to voice their views. Co-President Devon Helfmeyer, chapter member Sarah Young and Faculty Advisor Dr. Mark Gibney were all prominently featured in an article covering the demonstration. They were quoted raising concerns about biases against the poor and racial minorities convicted of killing Caucasians in the application of capital punishment and also highlighted their support for the moratorium movement, defining it to their classmates in the piece. Finally, they were able to collect numerous signatures in support of a moratorium at the event and over 100 people signed up to receive announcements from the club.<sup>280</sup>

The second campaign following the conference was also inspired by another attendee – the ACLU of Appalachian State University (ASU). The ASU chapter had long participated in the National Day of Appreciation for Abortion Providers by tabling and handing out educational materials, as well as getting supportive members of the community to sign a thank you letter to the closest provider in the region. In late March, the UNCA chapter also raised awareness about a woman's right to choose, setting up a table at the F-Word Film Festival – an event featuring documentaries by and about women<sup>281</sup> – to accomplish the same task. Like its counterpart, the group was successful in disseminating a host of information and getting numerous signatures in support of their local Planned Parenthood.<sup>282</sup> The event no doubt brought substantial encouragement to those who work in the face of great adversity to make reproductive freedom a reality for the citizens of their community.

On April 19th, the group followed up their tabling with another impressive educational endeavor: a forum about the rights of the disabled. Working with Equal Access, a disabled rights advocacy group, the ACLU of UNCA again drew press coverage in *The Blue Banner* by getting its name and mission out to a wider audience. A crowd of around twenty-five people attended and heard the panel raise awareness about issues facing the disabled, including the institutionalization of more than 7,000 North Carolina residents, and had many myths dispelled about their condition.<sup>283</sup> The groups also screened *Murderball* at the event – a highly acclaimed documentary about quadriplegics that play full contact rugby despite physical obstacles in their paths. It was truly an eye-opening experience for all in attendance.<sup>284</sup>

The ACLU of UNCA ended the academic year with one final event. On May 11, 2006, they co-sponsored a forum on racial profiling with the ACLU of North Carolina. Reserving the space and aiding in publicity, the chapter was able to get between fifty and seventy-five members of the campus and local community to join the affair. Speaking were the Executive Director of the North Carolina NAACP, a local city council member, a national ACLU attorney specializing in race issues and a campus professor of political science. Jennifer Rudinger moderated the event. In discussing a number of issues surrounding racial profiling, they successfully informed the local community about the serious implications of the practice, and everybody in attendance was well-served by the information they received.<sup>285</sup>



### **Section Three: Analysis**

With the substantial body of this work dedicated to analyzing the aggregate level social context and state level college chapter histories, it is important to take the information and synthesize it into lessons learned. The data provides a substantial wealth of information that, if analyzed properly, can be used to draw conclusions about positive directions for any future ACLU youth program. The purpose of this section is to accomplish that goal and to draw insight from each section that can be used for future infrastructure development by the organization.

## **Chapter 7: An Analysis of the Research**

Both sections of this work overwhelmingly demonstrate that youth are a vastly underutilized resource by the American Civil Liberties Union. Without a focused effort at youth development, the long-term efficacy of the organization will suffer. Whether drawing from its own national history, the history of college students in progressive 20th century social movements or individual chapter histories of undergraduate chapters in the state of North Carolina, a number of lessons abound for incorporation into a more effective program.

### **Observations about the Relevance and Importance of a College Program**

The history of the national ACLU provides some important insight to the importance of a more fully formed college development program. Throughout its history, the ACLU has changed with the times. From the beginning, it was an elitist institution, but the organization has learned to adapt and to develop increased membership through modern recruitment methods as well as to establish chapters nationwide and democratize the leadership apparatus by allowing state affiliates to have more input in decisions made at the national level. Investing more time, energy, and resources into the college program would continue this trend by moving the ACLU from an institution that has typically worried about negative publicity coming from its college groups, to one that is able to utilize its energy to advance civil liberties.

Secondly, it would build on the success of other organizations – notably the College Republicans. Their group has been tremendously effective in developing future political operatives and coordinating volunteer efforts across the country. The ACLU would also be well served by following their lead. Encouraging college activism allows for students to develop connections with leaders, future leaders and media. In addition, it facilitates the development of organizational skills, communication ability, writing ability and legal knowledge – specifically knowledge relating to civil liberties. While the ACLU does not have a county or city chapter in every area, as does the Republican Party, they can still facilitate and guide activism – ensuring the correct dissemination of ACLU opinions – as well as provide opportunities for college students to volunteer in state campaigns. Doing so would substantially improve the talent pool for future employees.

Further, college students can help disseminate ACLU viewpoints very effectively through educational campaigns – countering many of the charges levied against them – and college students are in the best position to do so. As the civil rights movement demonstrates – with students leading the sit-ins – college-aged people are much more likely to be able to participate in controversial activity. Unlike their older counterparts, students are generally not subject to repercussions from employers and lack familial financial obligations that often chill engagement. Taking advantage of this trend would be prudent.

Youth also have the capacity to enact social change. If chapter two demonstrated anything, it was that trend. The student protest movements substantially altered



American life, making it more hospitable to civil liberties and civil rights. Section two also showed that students can engage in a variety of activities that alter people's lives by advancing the cause of civil liberties. From rewriting school policies to facilitating change in local government practices and policies, students in North Carolina have made a difference. They have also contributed mightily by advancing educational programming that engaged their local communities.

Finally, the involvement of youth advances the long-term interests of the ACLU. As its history demonstrates, its membership base often changes with the prevailing political climate. After the resignation of Nixon, this trend proved to be the case, as it did in the Clinton era. When the Bush administration ceases to be in power, and many of the policies the ACLU opposes are reversed, this may prove to be the trend once again. A great way to ensure stable membership is to develop well-versed civil libertarians that join for more than single issues. College presents the perfect opportunity for doing so. It is a time of change, before beliefs are fixed and firm. With proper facilitation, at the aggregate level, the ACLU could help educate thousands of youth and ensure their continued involvement in civil liberties activism for decades to come.

### **Observations to Aid the Development of a Youth Model**

There are a number of things that could help in the creation of a youth development model. First, as with the student protest movement, who largely involved the offspring of secular humanist parents who were highly involved with the social sciences, that demographic would be a good place to start targeting when the ACLU recruits. Secular

humanism is nicely compatible with civil liberties principles, although they are not necessarily equivalent.

Secondly, as previously mentioned, state affiliates might be well served by making an effort to provide opportunities for college students to participate in campaigns. Doing so would help them develop their skills, reinforce their faith in the organization and further organizational goals. Next, the ACLU could do well by providing more educational materials to the chapters, specifically tailored for youth, that would enable them to become better educated and more articulate when discussing civil liberties issues. Failure to do so could result in chapters misrepresenting the organization's position.

That fact goes with activism too, where student or community papers might solicit comments on their actions. Hence, protocol should be encouraged and resources allocated to allow ACLU employees or volunteers to discuss plans of action and develop talking points for the groups that help succinctly articulate their positions. Further, Web development and Web resources could greatly aid the groups. The ACLU at N.C. State, for example, has received a number of complaints from its Web site that have allowed it to bring potential cases to the state affiliate. This type of activity, if encouraged, could allow college chapters to broaden the level at which the ACLU has eyes and ears on the ground in local communities and bring new cases into the fold. By taking advantage of this research, the ACLU could mightily improve its infrastructure on a large scale.

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## **Biographical Sketch**

Paul Anthony Funderburk was born on January 10, 1982 in Greensboro, North Carolina. He graduated high school from Western Guilford – located in the same city – in 2000. Enrolling at Appalachian State University in the fall semester of that year, he graduated on time in 2004 with a 3.92 cumulative GPA. After completion of his MA, he will begin working for the ACLU of North Carolina as their youth outreach coordinator.

